

THE DEPARTMENT OF CONSERVATION

THE MAINE FOREST SERVICE

Public Hearing

MFS Rule -- Chapter 23
Timber Harvesting Standards
to Substantially Eliminate
Liquidation Harvesting

Held March 25, 2004

Gorham, Maine

Don Thompson & Associates

Court Reporters

1 (Whereupon, the hearing commenced at 6:00 p.m. on
2 March 25, 2004.)

3 * * * * *

4 MR. GIFFEN: Thank you all for coming tonight. I am
5 Alec Giffen, director of the Maine Forest Service. With me
6 tonight is Don Mansius, who is the director of Forest Policy
7 and Management for DOC.

8 We're here tonight to hear people's comments on the
9 draft rules on liquidation harvesting. If anybody hasn't
10 picked up copies of the handouts, they are over here on the
11 side table. It includes the rules, the enabling legislation,
12 simplified description, et cetera.

13 How we got to this point in our process as a result
14 of a number of things that I thought I'd review briefly with
15 you -- for those who are not acquainted with the history.

16 Tony Lyons is going to be bored to tears. Andy Irish
17 is going to be bored to tears. But, uh, Ted will be bored to
18 tears, as well. Pat Strout. But for those who --

19 PARTICIPANT: We find it fascinating.

20 MR. GIFFEN: Huh?

21 PARTICIPANT: We find it fascinating.

22 MR. GIFFEN: Good. Liquidation harvesting has been
23 an issue for a number of years. As you all know, Maine Forest
24 Service has done field studies. Actually, there's been three
25 sets of studies that have been done using slightly different

1 methodologies.

2 Our conclusion has been based on past studies that
3 approximately 30- to 45,000 acres of land are affected by the
4 buy, cut, and sell business model per year in the state of
5 Maine.

6 Last year the Maine Legislature passed LD 1616. A
7 copy of that is over here. It directed us to do several
8 things.

9 First of all, it directed us to develop a set of
10 rules to substantially eliminate liquidation harvesting. It
11 also directed us to develop what are called complementary
12 solutions to the issue of liquidation harvesting. In other
13 words, the Legislature recognized that the rules, by
14 themselves, were not necessarily going to do the whole job and
15 that there needed to be other incentives and disincentives
16 provided to accomplish the objective of substantially
17 eliminating liquidation harvesting.

18 We've had stakeholder groups for both efforts, and
19 folks like Andy and Pat and Tony and Ted have all, Deanna, have
20 sat in on a number of those sessions with us and participated.

21 We had a total of about 40 people involved, and we
22 had one group that worked on the rules, and we had another
23 group that worked on the complementary solutions.

24 Our objective was to try to achieve consensus on both
25 of those sets of issues. We were not able to do so in either

1 case; however, the process of working with the stakeholders, I
2 felt, was very beneficial in that it enabled us to certainly
3 understand the issue much more thoroughly than we would have
4 otherwise, and to narrow the areas of disagreement.

5 In the end, however, neither group was able to come
6 to consensus, and the Maine Forest Service had to go forward in
7 response to our mandate from the Legislature and mandate from
8 the Governor to proceed on this issue, and we have both
9 developed a draft set of rules, and we've issued a report on
10 complementary solutions, which we have forwarded to the
11 Legislature as was required by law.

12 Our hearing tonight is to get testimony on the rules.
13 This is the third in a set of three hearings. The first one
14 was held in Farmington a couple of days ago. Last night we
15 were in Ellsworth, and this will be the final hearing in the
16 set.

17 After the public hearings are concluded tonight,
18 there will be a public comment period which runs through
19 April 5th. People are invited to submit comments in writing or
20 e-mail those comments. Don will be giving you his e-mail
21 address, and also over here are the materials for those of you
22 who want to submit additional comments in writing.

23 We will then analyze the comments that we received.
24 We will group like comments together, analyze them. We will
25 prepare a recommendation to the Commissioner of the Department

1 of Conservation who, in the end, has to decide what to
2 provisionally adopt. And I say provisionally adopt because
3 under the process that's in place for what are called major
4 substantive rules, they have to go back to the Legislature, and
5 then they will be considered by the Legislature, first by the
6 Agriculture Conservation of Forestry committee and then by the
7 full Legislature who will determine whether or not they -- the
8 provisionally adopt rules stay in place as provisionally
9 adopted, or whether or not they get modified.

10 We have discussed these rules, these draft rules with
11 the ACF committee of the Legislature. We have had several
12 sessions with them on complementary solutions and these draft
13 rules, and they have told us to go forward and do good work and
14 to report back to them after we're done.

15 Don is going to summarize the rules and the
16 complementary solutions. I would say before we get into the
17 details of that, that we have worked very hard to have the
18 rules be very highly targeted. We've worked hard with the
19 stakeholder group to come to a consensus.

20 We were directed by the Legislature -- this is a
21 point that came up last night so I'll say it at the outset --
22 there were folks last night who were suggesting that we ought
23 to reopen the whole Forest Practices Act.

24 People like Tony will be glad to hear this, and we --
25 more than one person has told us, and we told people that we

1 were specifically -- we were specific to the Legislature. They
2 were specific to us, that this was not to be an effort to
3 reopen the entire Forest Practices Act, but rather to deal in a
4 very targeted way with the issue of liquidation harvesting, and
5 that's what we have attempted to do in this draft set of rules.

6 The complementary solutions big picture kind of
7 overview are intended primarily to provide incentives for
8 improved long-term forest management. When Don goes through
9 those things, you will see that that is the primary thrust.

10 There is one disincentive which was included in the
11 complementary solutions report, and that was changing the
12 subdivision law to essentially if somebody liquidates a lot, in
13 other words they violate the eventual rules that come out,
14 that -- inclusion of that land in a subdivision for a period of
15 five years after the original purchase consistent with the
16 definition that the Legislature established, would not be
17 permitted.

18 That change in the legislation has been considered by
19 the Natural Resources Committee and received and ought to pass
20 recommendation. It's not been considered by the full Maine
21 Legislature at this point.

22 However, as I say, the overwhelming majority of the
23 recommendations in the complementary solutions report are aimed
24 at improving the prospects for long-term forest management
25 because we see that as part of the antidote for liquidation

1 harvesting.

2 If we can make this enterprise in forestry really
3 profitable here in the state of Maine, which is something that
4 is one of our objectives as an agency, then there will be less
5 incentive for people to undertake liquidation harvesting.

6 After the presentation that Don's going to make
7 summarizing things, we will answer any questions that you have,
8 and we found that there are a number of them typically at these
9 sessions, and then we will go to testimony.

10 I would ask that you come up here when you testify.
11 Please keep to the point. I have to be in Millinocket early
12 tomorrow morning. I would love to get home and get a few
13 hours' sleep before I have to hit the road.

14 I don't think that there is probably going to be
15 necessary to have a limit on time for a group this size, and we
16 ask that you please be respectful of other points of view.

17 There are strongly held opinions on many sides of
18 this issue, and it's important for us to be able to hear from
19 everybody and to have speakers, regardless of their points of
20 view, treated respectfully by, not just us, but by you as well.

21 So we would ask for your cooperation in that. With
22 that, Don. Oh, this is being transcribed, by the way, and we
23 are taking notes.

24 MR. MANSIUS: I'm just going to back up and provide a
25 little bit more context about how we got to where we are.

1 As Alec said, I'll go over a little bit on some of
2 the other pieces, the field study and the complementary
3 solutions report. I'll go through the rule and then I'm going
4 to go over some ground rules for tonight's hearing.

5 This proposed rule is part of the Governor's forest
6 stewardship initiative. It's a six-point initiative that has a
7 number of important elements that include this rule, but not
8 just the rule. It's also about supporting improved procurement
9 practices at mills, identifying the complementary solutions
10 that Alec referred to, supporting forest certification --
11 particularly for small landowners -- having the State provide
12 leadership by example, and continued Maine Forest Service
13 monitoring and reporting on liquidation harvesting.

14 In addition to the directions in LD 1616 last session
15 to us to do the rulemaking and develop a report on
16 complementary solutions, there were two other key pieces of
17 that legislation. One was a statutory definition of
18 liquidation harvesting which is defined as the purchase of
19 timberland followed by a harvest that removes most or all
20 commercial value and standing timber without regard for
21 long-term forest management principles and subsequent sale or
22 attempted resale of the harvested land within five years.

23 The law also contains a policy statement that defines
24 the public's interest in Maine's forests, and it finds that
25 liquidation harvesting is incompatible with those interests.

1 As Alec has said, the rule is part of a comprehensive
2 package, and I'm just going to touch briefly on a couple of the
3 other pieces.

4 If you take a look at this colored handout here, we
5 have in the ongoing context, the context of the ongoing work,
6 we are monitoring liquidation harvesting.

7 We do enforcement of the existing laws and rules. We
8 are looking at professional accountability in the foresters
9 licensing arena. We provide educational services to
10 landowners, loggers, and foresters, and we have this ongoing
11 effort to increase certified acreage in the state of Maine.

12 Now, within the comprehensive complementary solutions
13 report itself there were a couple of cross-cutting
14 recommendations, one that dealt with improving mill procurement
15 practices, and the other that dealt with initiating a concerted
16 effort to reach out to landowners, loggers, and foresters and
17 improve their awareness of better forest practices and
18 discouraging liquidation harvesting.

19 As Alec said, the -- in terms of the bulk of the
20 recommendations, they lean toward incentives, which I will go
21 through briefly, and a couple of disincentives.

22 The incentives of focusing on loan guarantees for
23 sustainable forestry investments. That's to allow landowners
24 who are interested in long-term forest management to have
25 better access to capital. Providing incentives to consolidate

1 for landowners who want to increase their acreage and commit to
2 sustainable management. Reduce taxes on capital gains, because
3 growing timber is such a long-term endeavor, we thought that
4 was an appropriate thing to recommend again.

5 Encouraging timberland investment through retirement
6 funds. Right now that is the mechanism that's available to
7 people with lots of money, and we're trying to identify ways to
8 make this kind of investment more assessable to people with
9 smaller amounts of money.

10 We recommend creating a sustainable forestry
11 revolving loan fund, and again, this would be something to
12 provide incentives for people to do the right thing.

13 Property tax rebates for sustainable forest
14 management. The State of Minnesota has a program right now
15 that provides rebates to landowners who commit to managing
16 their land in a certain way. It's administered by the State.
17 It's an actual rebate, it's not a tax reduction, and we
18 understand that it's a substantial amount of money, and so
19 we're going to be looking into that.

20 Again, an old one that's been around a long time is
21 reduced estate taxes with the goal of helping people to keep
22 their land in the family and pass it on through the
23 generations.

24 Alec mentioned the disincentive about prohibition on
25 subdivision of liquidated lands. The other disincentive, if

1 you will, is to -- we'll monitor the situation through time,
2 look at the effectiveness of all of these measures as we go
3 forward, and if they aren't having an impact, then we would
4 evaluate the need for any capital gains penalty which has been
5 proposed in the past.

6 One other piece that is in forming our work is a
7 field study. We conducted a field study last summer and we
8 went out and looked at a representative sample of harvests
9 across the state, 7.5 percent of the harvest acres from
10 2001/2002.

11 Our preliminary findings on that study, and I
12 emphasize preliminary, are that just under 20 percent of the
13 acres on an annual basis experience at least one change in
14 ownership around a harvest; 5 percent of the acreage on an
15 annual basis was purchased, harvested, and sold within five
16 years of the original purchase.

17 There are an additional 14.5 percent of the acres on
18 an annual basis that have been harvested, but they have not
19 been held for the entire five-year period, so the final
20 disposition of those acres remains to be determined.

21 We found that 2.5 percent of the acres on an annual
22 basis were not considered liquidation harvesting, and we
23 excluded them from the further examination because they
24 involved transfers among family members, preapproved land use
25 changes, and third-party certified landowners.

1 We did find that 2.2 percent of the annual harvest
2 acres could be considered liquidation harvesting as currently
3 defined, but the 2.2 percent is really not the final word on
4 this issue.

5 We also found that of all the sample acres, 82
6 percent had post-harvest stock in less than 40 square feet of
7 basal area and damage to the residual stands was quite
8 prevalent. We found that although these sites were heavily
9 harvested. We did not find any violation of the Forest
10 Practices Act.

11 But one of the things we need to look at a little
12 more closely is that the opinion of the field foresters who did
13 the field study is that 60 percent of all the sample acres were
14 considered high grade harvest that showed no silvicultural
15 intent, and little promise for the residual stand to recover
16 within a reasonable time.

17 We're going to be conducting additional field work to
18 formulate our final findings, so I encourage people to use
19 those numbers with some caution.

20 I'm going to speak briefly about the content of the
21 rule so that we're all working off the same page here.

22 Section 1 contains the purpose statement and the
23 purpose is to substantially eliminate liquidation harvesting as
24 defined by the Legislature.

25 Section 2 contains some amendments to the Forest

1 Practices Act rule, and what we're doing there is amending some
2 definitions in the rule, the Forest Practices Act rule, to make
3 them consistent with definitions in this rule.

4 Section 3 describes the scope and applicability of
5 the rule. Section 4 has the definitions necessary to
6 understand the rule. Sections 5 and 6 are really the meat of
7 the rule, so I'll spend a little bit of time on those.

8 Section 5 contains the exemptions. The Legislature
9 directed us to come up with a number of exemptions so that the
10 rule was highly targeted. And if you look at that section,
11 you'll see that there's ten or so exemptions.

12 The activities of any landowner or land manager who
13 qualifies for one or more of those exemptions are not governed
14 by this rule, and that we'll make clear in the final rule that
15 land that is owned now is not covered by this rule, and land
16 that is held for five years, at least five years after the
17 effective date of the rule, is not covered by this rule.

18 But the key exemptions in the draft rule as you see
19 it are for landowners who own 100 acres or less statewide, so
20 if you own 100 acres or less statewide, you don't have to worry
21 about this.

22 If you're harvesting on parcels of 20 acres or less,
23 regardless of how many acres you own, you don't have to worry
24 about this rule.

25 If you have your harvesting done by a certified

1 master logger on a parcel of 500 acres or less, you are exempt.
2 Extra lands are independently certified as well-managed, you're
3 exempt. That takes care of a substantial acreage of the state
4 of Maine.

5 Section 6 contains the harvest standards for any
6 harvesting governed by this rule. There's basically two
7 options: One, that the harvesting conforms to a harvest plan
8 that meets the standards identified in the rule and the harvest
9 is certified by a licensed forester, or harvesting does not
10 remove more than 40 percent of the volume on the parcel.

11 A landowner can apply to Maine Forest Service for a
12 hardship exemption if the situation arises whereby they harvest
13 a newly acquired piece of property heavily, they intended to
14 hold it for longer than five years, but certain financial
15 circumstances require that they sell before five years elapsed.

16 They can apply and we will evaluate the request on a
17 case-by-case basis. This exemption can only be used once in a
18 five-year period.

19 As Alec said, there's many situations that are exempt
20 from the rule, and this is intentional because we wanted to
21 adhere to the legislative direction and target the rule
22 strictly on the behavior of greatest concern.

23 Section 7 of the rule deals with responsibility. The
24 Legislature told us to make sure that we held the appropriate
25 parties responsible for compliance with the rule.

1 The landowner, the forester, and the logger can be
2 held jointly and severally liable for compliance with the rule,
3 and enforcement action would focus in on all parties to see who
4 was responsible for any violations.

5 Section 8 contains a variance. That's a common
6 element of any land use regulation ordinance or rule that
7 there's a safety valve for landowners who find that the rule
8 would work an undue hardship. If they meet certain criteria,
9 they can apply to Maine Forest Service for a variance.

10 Section 9 contains the effective date, and at this
11 point we are proposing the effective date be January 1st, 2005,

12 I want to go over some ground rules for the conduct
13 of tonight's hearing. Alec touched on a few, but I'll finish
14 off the list.

15 First, if you have to speak, please raise your hand
16 to be recognized by Alec. Once you have been recognized,
17 please come up to the podium and sign in. There's a sign-in
18 sheet.

19 When you began your testimony, please state your name
20 clearly and the name of any interest you're representing
21 tonight. Please keep your remarks short and on the topic.

22 If you are submitting written testimony, you don't
23 need to read it, you can summarize it for us and that will be
24 fine. If there is time remaining at the end of this session
25 and you have additional remarks to make, we will allocate that

1 time proportionally.

2 If you spoke at any of the previous hearings, we're
3 going to ask you to wait until those who are speaking for the
4 first time have finished, and then we will give you some time.

5 If you don't wish to speak tonight, or if you have
6 additional thoughts after the hearing, you can provide us with
7 written comments. You can either leave them with me tonight,
8 or if you're not ready to comment now, you can send them to me
9 either by regular mail or e-mail. E-mail is preferred and my
10 e-mail address is Donald.J.Mansius -- M-a-n-s-i-u-s --
11 @maine.gov, and we need your comments by April 5th.

12 I want to remind folks that this is a public hearing.
13 It's not a debate. It's an opportunity for the Maine Forest
14 Service and you, the audience, to hear some of the range of
15 viewpoints on the proposed rule.

16 We may ask you a question or two to clarify something
17 you said, and we ask that you give a concise answer to the
18 question. But we do not have time for an extended give and
19 take.

20 We also ask that people in the audience respect the
21 right of the speakers to express their opinions in a respectful
22 manner. Debate, interruptions, and comments from the audience
23 are not appropriate.

24 And as Alec said, we're here to listen to people's
25 thoughts about the proposed liquidation harvesting rule. We're

1 not here to discuss other issues that are not germane to this
2 rule. So please keep your remarks on the topic. Are there any
3 questions about the ground rules?

4 MR. GIFFEN: Thank you Don. Are there any questions
5 about the substance of the rules, or to some extent, if you're
6 curious about complementary solutions, we can talk about those
7 things as well. But our focus here is on the rules. Any
8 points of confusion?

9 MR. WADSWORTH: Where does the money come for those
10 revolving loan funds?

11 MR. MANSIUS: Could you identify yourself, please.

12 MR. WADSWORTH: Jack Wadsworth, forester, Hiram,
13 Maine.

14 MR. GIFFEN: Pardon. Your question again?

15 MR. WADSWORTH: Where does the money come from for
16 the revolving loan funds?

17 MR. GIFFEN: That's a good question, and we've raised
18 these issues with the Legislature and told them that there
19 would have to be a source of funding found.

20 It's possible that it could be bonded money. That
21 would have to be approved by the voters at some point in the
22 future. We're exploring those options.

23 Other questions?

24 MR. FOSTER: Cliff Foster. I'm a consulting
25 forester. When it comes to somebody who would like sell their

1 timber for whatever reason, as I understand it, you have to go
2 before the Maine bar, who's going to make the decision as to
3 whether this is legitimate or not.

4 MR. GIFFEN: Okay, so you're saying that somebody has
5 bought a lot and they're concerned that they don't want to do a
6 liquidation harvest, and I take it from your question that
7 they're looking at a harvest plan; is that correct?

8 MR. FOSTER: Well, they're looking at selling some
9 timber by either paying off a hospital bill, renovate their
10 house, or buy a car. I don't know. Whatever they want to do,
11 and they sell it to somebody who does that.

12 MR. GIFFEN: Who -- they sell the land to somebody?

13 MR. FOSTER: One of these -- you have some exceptions
14 in here, and one of the exceptions is that there's a hardship
15 sometimes.

16 MR. GIFFEN: Okay. You're.

17 MR. FOSTER: That's what I'm talking about.

18 MR. GIFFEN: Okay. You're asking about the hardship.

19 MR. FOSTER: Who makes the decision whether it's a
20 hardship or not?

21 MR. GIFFEN: The person would -- that is set up.
22 There two provisions actually that are somewhat related and
23 somewhat different, okay. One is -- the variance provision --
24 in order to qualify for a variance, the law is very specific
25 about what kind of circumstances can qualify for variances, and

1 they generally have to be things that are unusual to the
2 property and not as a result of our activity as human beings.
3 So variances are usually pretty limited.

4 A variance could involve something like, oh, I don't
5 know, ice storm damage might be something that would justify a
6 variance. In other words, it's not something that the
7 landowner did, it's something that was an act of God

8 So if somebody experienced severe damage from an ice
9 storm, they could apply. The Maine Forest Service would make
10 the decision.

11 The other provision, which is related to hardship, is
12 one that doesn't have to involve some act of God. Okay. It's
13 something that took place where the person was intending to own
14 the land for the long term, but something changed and they had
15 undertaken a harvest which perhaps wasn't in conformance with
16 the rules because they never had any intention of selling the
17 land. All of a sudden they find that they've got to sell the
18 land, and they would make an application to the Maine Forest
19 Service and the Maine Forest Service would make a decision.

20 So there are those two kinds of escape valves here,
21 okay, which serve somewhat different purposes. Does that
22 answer your question, Cliff?

23 MR. FOSTER: No. Well, I think the question was who
24 makes that decision?

25 MR. GIFFEN: Ultimately, it would be me.

1 MR. FOSTER: Pardon?

2 MR. GIFFEN: Ultimately, it would be me, with a
3 recommendation from my staff people. So for instance, somebody
4 like Dennis Brandon, who's sitting behind you, if somebody made
5 an application for a variance -- for a hardship case, we might
6 ask Dennis to go out and look at the situation and make a
7 recommendation to us. It would come through Don and,
8 ultimately, I would have to make the decision. Give you great
9 comfort?

10 Okay, other questions that folks have.

11 Yes, Sir.

12 MR. SCRIBNER: I have a number of questions. Do I
13 you go up to the microphone or go up to the front?

14 MR. GIFFEN: That's all right. If they are just
15 questions, you can just state your name and then ask the
16 question.

17 MR. SCRIBNER: My name is Wendell Scribner. I'm a
18 logger and a landowner from Harrison. I'm very concerned about
19 this legislation. I have a number of questions.

20 Who determines if you'll cut more than 40 percent of
21 the merchantable size timber?

22 MR. GIFFEN: Okay. Why don't I answer these one at a
23 time.

24 If there was a situation where we felt that more than
25 40 percent had been removed, somebody complained, or we picked

1 it up in a random check, or whatever, the Maine Forest Service
2 would do a cruise and determine whether or not more than 40
3 percent had been removed.

4 MR. SCRIBNER: So you only go on a complaint?

5 MR. GIFFEN: No, we also do random checks of harvests
6 and we would be looking for this along with other things as
7 well.

8 MR. SCRIBNER: What are the penalties for not
9 complying with this regulation?

10 MR. GIFFEN: The existing fine structure that the
11 Maine Forest Service has is \$1,000 a day. It's been discussed
12 within the committees that we've had and with the Maine
13 Legislature that that fine structure may need to be changed in
14 order to deal effectively with this problem.

15 What we have talked about in all of the sessions
16 where we've discussed this is that the level of the fine needs
17 to be enough to essentially take away the financial incentive
18 to undertake this practice.

19 So we would be looking to determine how much
20 financial gain was realized as a result of the rule of the
21 timber and the sale of the land, and we would be looking to
22 have a fine that removed that financial gain.

23 MR. SCRIBNER: Well, recently, this winter, I logged
24 a lot. Probably I cut 50 percent so I'm in violation of this
25 because I didn't have a forester marking it.

1 Another question. Who determines the hardship of the
2 emergency?

3 MR. GIFFEN: The Maine Forest Service.

4 MR. SCRIBNER: What are the penalties for not
5 complying with this regulation? If they determined that it is
6 not a hardship and you go and do it, what is a penalty, again
7 it's \$1,000 a day?

8 MR. GIFFEN: Yes.

9 MR. SCRIBNER: Who are third-party certified?

10 MR. GIFFEN: Well, there are a number of
11 certification systems. Pat Sirois is here in the room and she
12 can bend your ear on that topic. But basically folks can be
13 third-party certified by the FSC program, the FFI program or by
14 tree growth.

15 MR. SCRIBNER: What is the master logger?

16 MR. GIFFEN: A master logger is somebody who has
17 committed to a set of standards for the conduct of logging
18 jobs, and they, themselves, undergo a third-party audit system,
19 and their practices have to be found to be consistent with a
20 rigorous set of standards, and Andy Irish, who's back here, is
21 a master logger and after you're through with Pat, he can tell
22 you all about master loggers.

23 MR. SCRIBNER: Well, I'm really not interested. I'm
24 wondering why can't someone log their own property without
25 being a master logger or hiring a forester at umpteen dollars

1 an hour?

2 MR. GIFFEN: They can.

3 MR. SCRIBNER: Yeah, but if I cut more than 40
4 percent, I'm in violation.

5 MR. GIFFEN: No. Keep in mind that --

6 MR. SCRIBNER: If I hire a forester, I can still cut
7 50 to 60 percent.

8 MR. GIFFEN: Keep in mind that this is -- this
9 applies only to lands that are bought, cut, or sold within a
10 five-year period.

11 MR. SCRIBNER: So I wouldn't buy a woodlot then
12 because knowing that I would have to hire a forester at
13 probably 40 bucks an hour.

14 MR. GIFFEN: Well, that would be your choice as to
15 whether or not you chose to buy the woodlot, and it would be
16 your choice as to whether or not you opted to cut less than 40
17 percent and stayed within the law that way.

18 This is assuming that you're planning on buying and
19 selling within five years. It would also be your choice as to
20 whether or not you hired a forester to prepare a plan.

21 Dennis and another one of our foresters worked on
22 some harvest plans that would be consistent with these rules,
23 and our estimation is that these are going to cost in the
24 neighborhood of somewhere between \$1 and \$5 an acre, depending
25 upon the size of the lot and the complexity.

1 So when you compare that to the purchase price of a
2 piece of land at hundreds of dollars per acre and you compare
3 it to the value of the wood, it's really nowhere nearly as
4 large an investment as/or return as other things that you would
5 be realizing.

6 MR. SCRIBNER: Why would persons owning 100 acres or
7 less be exempt?

8 MR. GIFFEN: Because this is intended to be targeted
9 to deal with the fact that there are some individuals for whom
10 this is a business model. They are the ones that are affecting
11 the largest acreage, and hence, when we were told by the
12 Legislature to keep this narrowly focused and so that's what
13 we've done.

14 MR. SCRIBNER: So are you going to have to go to
15 court like you did with the Forest Fire Suppressions Act, which
16 was found to be unconstitutional?

17 MR. GIFFEN: Somebody could sue us over this. I
18 don't expect that this would be found to be unconstitutional

19 MR. SCRIBNER: Why is the government exempt from this
20 legislation when it takes land by eminent domain?

21 MR. GIFFEN: I don't know that it is.

22 MR. SCRIBNER: That's one of the exemptions.

23 MR. GIFFEN: Oh. Well, we wouldn't want to -- if you
24 owned a piece of land -- let's say you just bought it and you
25 cut it, we wouldn't want to come after you for violating the

1 law if then a government agency said we needed this piece of
2 land for a transmission right-of-way, or something, we wouldn't
3 want to hold you accountable for the fact that the government
4 had decided that there was some public purpose to be served.
5 So that's for your protection.

6 MR. SCRIBNER: What is a certified resource manager?

7 MR. GIFFEN: Certified resource managers are
8 foresters who have gone through an FSC training and
9 certification program and have been certified as capable of
10 producing plans that meet the FSC requirements.

11 So that as a landowner, if you want to get a
12 management plan prepared that qualifies your acreage to be FSC
13 certified and your wood to be FSC certified, you could hire a
14 certified resource manager to do it.

15 MR. SCRIBNER: Who and what qualifies for group
16 certifications?

17 MR. GIFFEN: Well, the Small Woodland Owners
18 Association, Peter Lawrence is here, and Everett Towle is here
19 from SWOAM and there are probably other folks here from SWOAM
20 as well, recently established group certification program under
21 tree farm. There are other groups that are in the works.

22 Tony, are you folks pursuing a tree farm group?

23 PARTICIPANT: Yes.

24 MR. GIFFEN: So various organizations can undertake
25 to establish a group which provides some economies of scale in

1 folks getting certified.

2 MR. SCRIBNER: How do you become certified through a
3 group?

4 MR. GIFFEN: You talk to Peter or Everett, or Tony.

5 MR. SCRIBNER: What if I don't want to join their
6 group? I used to belong to a small group. They destroyed it.
7 You had to have management plan and all these other things.

8 MR. GIFFEN: Well, if you don't want to become a
9 member of a group, you don't have to. If you want to, then you
10 be in touch with groups.

11 MR. SCRIBNER: And they lobby stuff that I don't
12 appreciate it. Anyway.

13 What if you have to sell more trees or your land in
14 the five-year period to pay for personal needs?

15 MR. GIFFEN: Well, you can have a harvest plan -- if
16 you're talking about exceeding the 40 percent, you can have a
17 harvest plan.

18 MR. SCRIBNER: No, I'm talking about the one-time
19 exemption within the five-year period. Say you need more
20 money?

21 MR. GIFFEN: Yes, you could apply for an exemption.

22 MR. SCRIBNER: What if I need more?

23 MR. GIFFEN: Pardon?

24 MR. SCRIBNER: What if I need more than the one-time
25 sale within the five-year period?

1 MR. GIFFEN: Then, according to this draft rule,
2 you'd be out of luck.

3 MR. SCRIBNER: And I would be fined what, a thousand
4 a day?

5 MR. GIFFEN: You would be fined to remove the
6 financial incentive for undertaking the practice.

7 MR. SCRIBNER: So in other words, I have to get rid
8 of my daughter or something, right, because she has cancer.

9 MR. GIFFEN: Do you have a lot more questions, sir?

10 MR. SCRIBNER: Yes, I do, sir.

11 MR. GIFFEN: Okay. Well, I would suggest -- why
12 don't -- I'm happy to answer your questions.

13 What I would suggest is that we get on with taking
14 people's testimony and I'll stay as long as you want to answer
15 all your questions at the end of the session.

16 Are there other questions that folks have? If not,
17 how many folks would like to speak?

18 MR. HANINGTON: I have two questions. Scott
19 Hanington, H-a-n-i-n-g-t-o-n, Wytovitlock, private property
20 activist.

21 The first question, Alec, is the data the Maine
22 Forest Service collected, what was the average size parcel that
23 was under the definition of liquidation harvesting?

24 MR. GIFFEN: I don't have that number in my head.

25 Why don't you ask the second question while Don is looking that

1 up.

2 MR. HANINGTON: Same data that the Forest Service
3 collected, what geographic location was liquidation harvesting
4 taking place geographically where the violations was?

5 MR. GIFFEN: It was mostly toward the southern and
6 developed part of the state as I understand.

7 MR. HANINGTON: Thank you.

8 MR. GIFFEN: Are there other folks that have
9 questions? If not, how many folks would like to testify this
10 evening?

11 Why don't we start with this gentleman.

12 And again, please state your name when you start your
13 testimony.

14 MR. WADSWORTH: Hi. My name is Jack Wadsworth. I'm
15 from Hiram, Maine. I received a bachelor's of science degree
16 in forest management from the University of Maine in Orono, in
17 1971.

18 I come from a long line of descendants who have
19 continuously farmed and managed land in Hiram, Maine since
20 1790. Since 1971, I have had several positions in managing
21 forestland.

22 I worked 18 years for the S. D. Warren Company with
23 their tree farm family program where we supplied forestry
24 advice to landowners in southern Maine and southern
25 New Hampshire.

1 For the past ten years I have been president of
2 Wadsworth Woodlands, Incorporated, a consolidated forestry
3 business. We employ two other foresters besides myself, and we
4 manage approximately 60,000 acres of land in southern Maine and
5 southern New Hampshire. We are also tree farmers.

6 The proposed liquidation harvesting rule is a bad
7 idea. You cannot legislate emotion. I believe that this rule
8 is derived from how some people view timber harvesting.

9 Aesthetics is the key that drive people to try to
10 legislate the timber industry. I personally like to see a
11 well-managed timber harvest that when finished is aesthetically
12 attractive. It is impossible to legislate the harvest of
13 timber and still allow a professional forester to perform
14 appropriate silvicultural management. Every wood lot is
15 different due to tree type, soil conditions, and past
16 management practices.

17 The State already has timber harvesting regulations
18 that require certain levels of basal area to be maintained. It
19 would be unconscionable to enact a law that would allow a
20 landowner to harvest no more than 40 percent of their timber.

21 Harvesting more than 40 percent can be performed well
22 especially if managed by a professional forester, and the
23 results can be aesthetically pleasing.

24 Limiting a harvest only causes hydrating of best
25 timber and causes the lowest quality trees to be left. This is

1 typical of poor forest management.

2 Imagine enacting a law that would allow one to use 40
3 percent of their paycheck, their life savings, or their 401(k).
4 Isn't this against our rights as individuals to live in a free
5 country?

6 My wife and I have three children all of which are
7 college age. We started a stock market college fund 20 years
8 ago. Everything looked great until the value of the stock
9 spiraled down four years ago. We lost over 50 percent of the
10 college fund value.

11 Prior to the stock market decline, we purchased a
12 66-acre woodlot. We harvested more than 40 percent of the
13 timber to help pay for the property. Within three years of
14 purchase, our college fund was severely depleted. We sold one
15 six-acre parcel to pay for college tuition for one year.

16 If the timber harvest rule were enacted at that time,
17 we would have been trapped and slapped with a penalty. Some
18 can argue that there will be a hardship case clause, but these
19 types of processes take time, money, and cause additional
20 hardship.

21 The points that I wish to leave you with are the
22 State already has sufficient forestry laws, if followed with
23 good conscious and professionalism, would negate the need for
24 this law.

25 You cannot legislate emotion, and this is nothing but

1 a feel-good politics. To enact this rule would lead to
2 increased hydrating. It takes individual rights away from
3 landowners. We all know that the business climate in Maine is
4 tough. Additional frivolous rules cause less cash flow and
5 anyone in business needs cash flow to employ people.

6 The more people a professional business can employ
7 adds to the State's tax base. We should not be making rules
8 when only 2 percent of the timber harvest are involved. Thank
9 you.

10 MR. GIFFEN: Who would like to come next? Fred.

11 PARTICIPANT: I'm a resident of Poland, Maine. I'm a
12 consulting forester. I'm a wood landowner, I'm also a licensed
13 real estate broker and surveyor. I do everything.

14 Basically, I'm opposed to these rules for several
15 reasons. I guess the thing that bothers me about as much as
16 anything is that it says the enabling act that called for this
17 rulemaking which said liquidation harvesting removes most or
18 all of the merchantable timber, then it goes on to say that
19 anything over 40 percent is most of the timber.

20 If you ask any man on the street what most of or all
21 of something is, I can't believe that many would say down as
22 low as 40 percent or something. I would think more likely it
23 ought to be up near 75 or 80 percent, if you're going to -- get
24 even concerned about it.

25 I think if this rule goes through, a buyer of timber

1 could be tempted to -- if he couldn't sell the land for five
2 years, they're probably going to cut it harder than they would
3 have normally.

4 I've noticed a lot of buyers and sellers of land
5 lately have been leaving more timber than they used to in the
6 past. I call it real estate enhancement. They're trying to
7 leave something that's enticing to the next buyer, and so they
8 have been leaving some because they knew that within five years
9 they could sell the land and get that money back.

10 But if this rule goes through, all they can do is cut
11 some timber during that five-year period, can't sell it. I
12 think they are going to cut it harder, and then after the
13 five-year period, someone can go in and cut what's left of it
14 probably.

15 One of your exemptions here allows anyone that has
16 the State, local permits for subdivision to be able to go in
17 and cut beyond the 40 percent. In other words, clearcut it.

18 It seems to me if anyone's intending -- if they can't
19 sell the timber more than 40 percent, they're going to go ahead
20 and get their subdivision permits and then go in and then just
21 completely wipe it out and get all they can out of it and sell
22 the land, which is going to be legal, but that's not going to
23 leave anything for the next buyer of the land, or if someone
24 buys a house lot. It's going to be pretty darn barren, but it
25 would be a legal exception because they had the subdivision

1 permits.

2 All that's going to do is encourage sprawl. Just the
3 thing that the public say they don't want is urban sprawl.
4 This is going to force people to go through the process and
5 subdivide their land probably more than they would have
6 otherwise.

7 Basically, I think the big losers under these rules
8 if they go through will be the owner that's owned forestland
9 for a long period of time, grown the mature timber and needs to
10 sell out, in other words, that's their retirement income.

11 I've worked for a lot of clients like that. They
12 managed their land very well for long periods, some of them 30,
13 40, 50 years. When they get old, that's their retirement fund,
14 or if they die, their estate has to sell it to get money to pay
15 the inheritance taxes.

16 But if this rule goes through, they won't be able to
17 cut heavy enough, I mean the buyer won't, so the buyer -- the
18 only thing they can do is to discount the price they pay for
19 that person that's owned it a for a long period of time.

20 So, as I say, the loser is going to be the one who
21 owned it the longest period of time. It isn't going to be the
22 buyer or the developer because they're going to have to -- they
23 know what they're doing when they're going into it, but the guy
24 that's owned it a long time is going to sell last.

25 We've got a capital gains income tax in the State of

1 Maine. If a guy sells a piece of land for \$500 an acre that's
2 worth \$1,000 an acre, the State is going to get less money in
3 the treasury.

4 I think the cost of enforcing this rule is going to
5 be darn expensive. I have been involved in a lot of timber
6 stand reconstructions over the years where you had to go in and
7 measure the stump to see how much was cut. It's going to be
8 darned expensive, and I think it's also going to be expensive
9 for the landowner, but if there is any chance that they're
10 going to be accused for overcutting, they're going to have a
11 pretty darn intensive harvest crews to just be able to justify
12 if they are accused by the State.

13 So it's going to work both ways, but I think the
14 State's going to end up spending a lot of money enforcing it.

15 I know there is a lot of -- I belong to SWOAM. I
16 belong to the Maine Forest Products Council. I know that there
17 are a lot of people who belong to these organizations that have
18 bought forestland that's been cut -- been cut fairly hard.

19 I bought a lot of land. I started buying land 40
20 years ago, 41, -2 years ago, I guess. When you're young, you
21 don't have top dollar. You don't go out and buy a lot of
22 mature timber. You've got to buy something that someone else
23 has cut, and hope it's going to grow.

24 Well, I'm at that stage now where it's grown, and
25 I've got some good timber. But if people aren't allowed to buy

1 this land and cut the timber and then sell the land, there's no
2 market out there for someone that's young and starting in and
3 wants to acquire a piece of land and hold it.

4 So I don't think this liquidation harvesting is half
5 as bad as it's being made out to be. Other people have said
6 that it's only a very small acreage, and I don't think it's
7 near as serious, but it's not the worse thing. What it's
8 trying to do is to rule fast to make -- try to make criminals
9 out of people who are in a legitimate business of buying land,
10 cutting the timber, and selling it. It's been going on for
11 years and it's a legitimate business. Thank you.

12 MR. GIFFEN: Ted.

13 MR. JOHNSON: My name's Ted Johnson, and I'm
14 testifying on behalf of Wagner Forest Management regarding the
15 proposed rules, and I would like to acknowledge on behalf of
16 Wagner the recognition of the hard work that everybody has put
17 into it. The stakeholders.

18 I was an observer and I do know they met often and
19 spent a lot of time and put a lot of good effort into it, and
20 unfortunately, after reviewing the draft liquidation harvesting
21 rules, we cannot support them.

22 When the law was first passed, Wagner was very much
23 under the impression that it would not probably affect us.
24 Unfortunately, as we read them, they will

25 Both Gordon Gamble, who is a forester with Wagner,

1 Jerry Poole is another forester, testified when they spoke
2 about the harvest standards Options 1 and 2 under Section 6,
3 spoke about the exception from lands that have received
4 third-party -- independent third-party certification under
5 Section 5(b).

6 Fortunately, Wagner was very lucky to acquire some
7 very well managed lands recently, large tract of lands that
8 were third-party certified; and as part of that agreement,
9 Wagner will pursue third-party certification and that will be
10 occurring in 2004.

11 Those are exceptionally well managed lands, and as
12 such, the acquisition was part of these rules, and we are
13 exempt. All the lands Wagner has will be exempt, but that's
14 not the point.

15 The point is, had these rules been in effect, what
16 would be the impact? And it is Wagner's hope and goal that
17 down the road there will be other forestland we can invest in.

18 We contacted the -- some accredited auditors that we
19 will be working with to have them review the rule, and it is
20 their impression, and we think it makes sense, that despite the
21 assertions to the contrary, it's not an exemption.

22 If it -- after it says are exemptions, it said
23 period, it would be, but instead it goes on. According to
24 these auditors, as written it would require what's called a
25 compliance audit which is a complete different focus than the

1 conformance audit under current third-party certification
2 processes.

3 What we've learned is that the objectives and scope
4 of a compliance audit are very different, and a compliance
5 audit must have a high level of certainty which would require
6 visiting all or nearly all of the harvested sites.

7 The audit will have to satisfy -- to satisfy the
8 regulation will have to -- they'll have to be able to
9 demonstrate with certainty, not from looking at paper, but from
10 looking at the land and reviewing deeds that, in fact, it
11 complies with the rule.

12 The on-ground verification of all harvested sites
13 against requirements of this rule and verifying deeds would be
14 a lengthy and expensive process.

15 Additionally, due to the liability of the auditors
16 conducting this audit, they would be required to carry a level
17 of professional liability insurance.

18 It's not necessary for conducting voluntary forest
19 management and standards audits under the current third-party
20 certification systems. For an organization to satisfy the
21 rule, the requirements for these -- to satisfy these
22 requirements, it would be most appropriate to have a separate
23 auditor than you would normally use for your third-party
24 certification, that is, to keep the integrity of the process of
25 compliance, like an IRS audit, different from a conformance

1 audit for third-party certification.

2 That would add cost, significant cost. It would also
3 be likely that they would be done at different times by
4 different auditors, and the cost to us to pursue this would be
5 greater.

6 Now, as I said, we recognize that our lands are
7 exempt. We are going to pursue third-party certification on
8 some of our lands as both a contractual commitment, and we
9 believe it's the right thing to do, and these, as I said, were
10 well managed lands that were under third-party certification.

11 But when we look at that, we think about down the
12 road what we believe is in the best interest of the state and
13 keeping with the commitment of the Governor to encourage more
14 third-party certification when the rule -- when you go to that
15 section and it says third-party, those lands in the
16 third-party -- exempt -- third-party certification are exempt,
17 it should say period, and that would act as a great incentive
18 for large landowners and managers like Wagner or others, as
19 well as these groups -- small landowners are grouping together.
20 What is the incentive? It would be a disincentive, and we
21 think that is in the wrong direction.

22 I appreciate the time and thank you for listening.

23 MR. GIFFEN: Cliff.

24 MR. FOSTER: I'm Cliff Foster. I'm a consulting
25 forester. I've been in this business for about 45 years.

1 Tonight I'm representing the Maine Landowners
2 Alliance, as well as myself.

3 I guess the one thing that struck me most about this
4 is that flat out the State telling you how to manage your land,
5 and I don't think that's right from the standpoint of the
6 Constitution of this State or the country for that matter.

7 This business, so-called liquidation harvesting, has
8 been going on for probably a couple of hundred years anyway,
9 and as a state, we haven't done too bad. In fact, I'll defy
10 anybody to go in any other state and find any more wood that
11 we've had on land that we've treated commercially for the last
12 300 years. I don't believe you'll find one.

13 What this is about really is nothing. We're talking
14 about 2 percent of the land. One of the questions I have is
15 how much of that land is ever converted into something else
16 which is treated that way? I doubt whether you'll see very
17 much of it.

18 The biggest threat to Maine in my opinion is the
19 conversion of land to some other use, and in Maine it is
20 particularly houses. We don't particularly want business here,
21 but we like houses.

22 But anyway, there are a number of reasons in addition
23 to that why I'm opposed to this type of legislation. It's
24 one-size-fits-all forestry and from what I can see, and the
25 land that I've managed over those years, there's no one woodlot

1 or no two woodlots are the same, but this is going to treat it
2 like it was one. It's like a look alike contest.

3 And not only that, in southern Maine, if we go this
4 route, coupled with the Forest Practices Act, that's what
5 you're going to have. You'll tend to get rid of biodiversity,
6 which is probably at its best in southern Maine because of the
7 way land has been managed in different ways which has been a
8 plus in the long run, in my opinion. We will tend to get rid
9 of that over a long period of time so everything looks the
10 same. Wouldn't that be wonderful.

11 If a person needs money for whatever the reason,
12 unless we have more faith in rocks and trees than people and
13 you go to sell your land and somebody comes along who will buy
14 the land and the timber, and he'll cut the timber and then sell
15 the land afterward, that means it's going to devalue whatever
16 you might have gotten for that piece of land before is going to
17 reduce the value because he is not going to run afoul of this
18 law, which means he's not going to cut the timber, which means
19 you're not going to be paid for the timber that's left.

20 It's the next guy who owns it that's going to get the
21 timber, not you. So from that standpoint, it's a bad idea.

22 If somebody's got a serious health problem, it's a
23 bad idea. Put that up against some trees or some rocks or some
24 soil or any combination of that.

25 And I expect that most of the property, like I said

1 before, that's been treated by somebody who bought the land and
2 the timber, cut the timber, and then sold the land probably is
3 still in trees. That's my guess.

4 Not only that, I don't think that this committee who
5 looked at this land looked at anything that was over five years
6 old. But I think if they ever wanted to go back and look at
7 land that was maybe 25 or 30 years ago and treated in the same
8 manner, and you probably find a lot of trees on it which have a
9 lot of value, and has a lot of the potential for value in the
10 future.

11 So what is this going to do to that? Well, it's not
12 going to help it. I've had the occasion to make management
13 plans for people who have bought together 40-acre tracts from
14 somebody who bought land, sold the timber off, and chopped it
15 up in 40-acre pieces, sold it. And these people are putting
16 together this management plan on it, and it's probably going to
17 be there for a long time. It's going to discourage that. It's
18 not going to happen.

19 It was said before, not everybody has a lot of money
20 to buy land the first time around or when their young.

21 I think this particular piece of legislation really
22 is going to amount to hassling people more than it's going to
23 do any good for Maine or the economy. The reason I say that
24 is, every time you cut a piece of land whether it's partially
25 or clearcut, you're going to reduce the growth to some degree.

1 That's been going on for 300 years.

2 We're not going to screw up the growth by this type
3 of legislation. Growth is going to be reduced temporarily
4 every time you cut a tree. Can't get away from it. It's a
5 fact of life, and this is not going to stop that. It's going
6 to continue, at least if you manage your land and know what
7 you're doing.

8 And right now probably, I don't know, in the last 40
9 years or so this is probably the most risky time to buy a piece
10 of land in Maine than it ever has been because you never know
11 what the Maine Legislature is going to do from one biannual to
12 the next.

13 I've spent six years there and I've seen this happen
14 in just six years. Every biannual there's a legislation that
15 comes in here to do something to forestland.

16 It seems like the people who own it can never do
17 anything right and can never get enough of doing anything
18 right, for whatever reason.

19 I think that doesn't leave a good taste in a lot of
20 people who own land. It doesn't leave a good taste in their
21 mouth at all, and I can tell you, in my opinion, most people
22 want to treat their land properly.

23 There are times, however, when there is a need for
24 some resource and sometimes that means converting trees into
25 cash, and I see nothing wrong with that.

1 As a matter of fact, this Monday of this week I
2 looked at 103 acres of land not too far away that was cut and
3 sold in the last year and some of the tree growth tax program.

4 It was cut to the Forest Practices Act minimum and
5 might be a little bit below. I didn't stop to figure it out.
6 But all the trees that were stumps were left, and all the good
7 trees are gone. The good part about this particular case is
8 that it had a carpet of white pine reproduction seedlings all
9 over it, and what should have been done in that case, and I
10 don't know what the stand looked like prior to that, but it
11 should have been clearcut.

12 It was a need for money for that person. This law is
13 not going to recognize that at all. It's going to take it out
14 of the forester's hands and the landlord's hand. That's not
15 good, in my opinion.

16 But the final bottom line is, I just wonder if the
17 government gets to the point that it doesn't trust its own
18 citizens to manage their land in a proper fashion, we could be
19 in trouble. Thank you much.

20 MR. GIFFEN: Gentleman back here.

21 MR. POLARD: My name's Lloyd Polard. I'm a land
22 developer and logger. Also a member of the Maine Landowner
23 Alliance also.

24 I guess I'll start out -- we're here to discuss
25 timber liquidation harvest rule, and let me begin with a five-

1 or ten-year review of the wood in the state of Maine so we can
2 improve on the years to come.

3 We are such a global economy as evidenced by the loss
4 in manufacturing jobs. I'm from the Oxford Hills area so we
5 were heavy in the dowel, clothespin and paper industry.

6 Now it's cheaper and more business friendly to
7 produce these products outside of Maine now, forcing the
8 companies of Timberlands, Penley Corporations, C. B. Cummings
9 to close, never mind all the paper companies around the whole
10 state that have had financial trouble.

11 Many of the companies have gone bankrupt and are now
12 trying to come back and operate adding to the fiber crisis that
13 we had this winter, and it's hard to start to see what the
14 major crisis in the wood business will be next with all the
15 fiber industry, you know, fiber shortage and paper companies.

16 We have an aging work force in the logging industry.
17 The average age of a logger is 43 to 44. There is little or no
18 new people getting into the logging industry. We have lost
19 roughly 15,000 manufacturing jobs in the last five years.

20 We are one of the highest tax states. We have a
21 major budget crisis at the State level, and our young are
22 leaving to seek employment elsewhere at alarming rates. In
23 spite of all these facts, we continue to make laws and rules
24 that become disincentives to all the business climates.

25 In Maine we wish that we could have a better business

1 climate and could offer more work to all the young people who
2 come. Some of the basic questions that we need to ask is, you
3 know, you look around at how are the farmers doing, how are the
4 fishermen doing, how are the loggers doing.

5 All these industries are examples of the added laws
6 and rules that become disincentives for doing business in the
7 state of Maine.

8 Now, let me look back to the current crisis of the
9 wood business. The Forest Service study estimates the annual
10 liquidation harvest occurred on only 2.2 percent of the annual
11 harvest. The fact is a direct result of the forest industry's
12 instability in the last five years.

13 Most of the land that has come on the market has come
14 on the market because of the bankruptcies, you know, you take
15 timberland. They had to sell their property. Penley and C. B.
16 Cummings did not go bankrupt in the Oxford Hills area, but yet
17 all that land came on the market for people to buy.

18 It is that type of instability in the forest industry
19 that created that. So that land was available to buy at
20 different times. We need to make sure with Maine Forest
21 Service data that we make the changes in forest management as
22 needed not as aesthetic needs where we change just because we
23 don't like the aesthetics of it and we don't pay attention to
24 the data.

25 In 1989 we voted the Maine Forest Practices Act in.

1 It was supposed to be the answer to our problem. Since then
2 we've voted, had two forest compacts that cost millions of
3 dollars and wasted everybody's time. What became of them?

4 They were voted down statewide twice. That should
5 speak volumes for all the state of Maine folks who didn't want
6 more regulations and disincentive in regarding the logging
7 industry. Rather, what this says to me, and hopefully to you
8 that we are trying to protect and take and keep our incentives
9 to keep the very jobs in Maine of our current and projected
10 State budget crisis.

11 I think we should start addressing these issues and
12 make incentive that promote a business atmosphere in the state
13 of Maine. Let us take the next step and put these issues again
14 at the top of our state agenda.

15 MR. GIFFEN: Gary.

16 MR. BALKKAN: My name is Gary Balkkan. I'm a
17 licensed forester and a small timber landowner with
18 80-something acres up around my home place in North Yarmouth.
19 I have a few other little pieces here and there.

20 I participated in the other stakeholder group working
21 on liquidation, the complementary solutions group as a
22 representative of the Maine Chapter of the Association of
23 Consulting Foresters. Perhaps of more interest to you tonight,
24 I'm in charge of the timberland transaction business here in
25 the northeast for LandVest headquartered in Boston. My office

1 is up in the Old Port.

2 LandVest manages about 540,000 acres throughout Maine
3 and the northeast for private investors. Last year we were
4 directly involved in the transfer of nearly a million acres
5 nationwide. Quite a bit of that was here in Maine.

6 Over the last decade or so, my investors played a
7 significant role in the transactions involving Diamond
8 International, James River, S. D. Warren, International Paper,
9 Plum Creek, New West Baco, UBS, John Hancock, Natural Resources
10 Group, GMO, Resources Investment, Inc., and many other publicly
11 traded companies, private companies, investment groups, and
12 family ownerships.

13 I have an interesting vantage point in that I am able
14 to observe buyers, sellers, and the land resource itself
15 before, during, and after these transactions.

16 I think we all understand what can only be described
17 as another long-term redistribution of timberland from one
18 ownership profile, forest industry in this case, to other
19 ownership profiles. Most agree that this latest redistribution
20 trend began in the mid-80s.

21 Why this is happening is beside the point tonight,
22 but the buying and selling and speculating on timberland had
23 been going on since colonial times. It's the outcomes that
24 we're really interested in.

25 The most truly unbiased accounts this redistribution

1 is going well. The largest amount remain with forest industry
2 although quite a bit has changed hands from one industrial
3 owner to another. To a large degree these reconfigured
4 industrial lands are closer to the mills, the more highly
5 productive sites, and easiest to work.

6 The visually and environmentally sensitive areas,
7 including the most developable components, are in large part
8 what's been sold. A significant amount of that is probably
9 approaching 2 million acres here in Maine has gone into public
10 or ENGO ownership either in fee or easement.

11 Another significant amount has been transferred to
12 non industrial ownership such as TEMOS and REETS, which are
13 rate of return driven.

14 These investors know that good forestry provides a
15 better return than liquidation. Many of these new investors
16 are giving government and ENGOS second swing at conservation
17 acquisitions. It's logical for them to sell easements and
18 high-amenity fee land as it improves their overall rate of
19 return.

20 Another substantial acreage is being accumulated by
21 individuals and families large and small. Some of these
22 multigenerational Maine-based companies are formerly tied to
23 forest industry land.

24 This is a really a terrific thing that has been going
25 unreported. They're going from tenant farmers to owner

1 farmers. And finally, there's a meaningful acreage that are
2 going from individuals and families -- going to individuals and
3 families as passive investors seeking to diversity into a low
4 risk counter cyclical, socially responsible asset class known
5 as a good place for long-term capital preservation, as well as
6 appreciation. I, for one, would like to see more young Maine
7 families join this bandwagon.

8 A much smaller segment, according to the Maine Forest
9 Service, 2.2 percent or 10- or 12,000 acres, I guess, is going
10 to so-called liquidators. I prefer to think of it as a 97.8
11 percent success rate. What happens to the liquidated land?
12 Well, guess what, after being cut, most of it's being purchased
13 by long-term investors, you've heard that tonight.

14 There's an interesting story in the current issue of
15 Northern Woodlands which I've attached to my written testimony.
16 It demonstrates the logical outcome. Cutover land is being
17 bought and nurtured back into production. So what has really
18 been lost? Well, here's something: 4.5 percent of the acreage
19 considered in the Maine Forest Service study was excluded
20 because it was being converted from the forestland base to
21 another use.

22 To me this is exactly where we should focus. Much of
23 this 4.5 percent is experiencing a terminal harvest, the last
24 time it would be cut. Most of it is happening in southern
25 Maine, and as best that I can tell, this is what stirs people

1 up.

2 Think about that, 4.5 percent being converted to non
3 forest use. I find that very troubling. I read yesterday that
4 North Carolina lost over a million acres of forestland to other
5 uses in the last decade.

6 When you overlay our nation's natural population
7 growth rate, the ratio becomes clear. Land consumption or over
8 consumption really deserves the attention.

9 I encourage you to vote down these rules. Why? For
10 starters, because they have no basis in silviculture, but more
11 importantly, they won't work.

12 These rules are like swatting flies with a sledge
13 hammer. Not only will you miss the target, but you'll inflict
14 damage where you don't want it. There's a paradox. These
15 rules destabilize the marketplace, apply downward pressure on
16 timberland values, drive up the cost of government by increased
17 data collection monitoring, and enforcement, distractors to
18 loot other enforcement efforts, reduce State revenues and
19 ultimately, in my opinion, favor the liquidation business
20 model.

21 What happens if these rules get voted in? It won't
22 be the end of the world. I think the Maine Forest Service ends
23 up the big losers as these rules will be very time consuming
24 and difficult to enforce.

25 Forensic forestry, cruising timber from the stump

1 down, is not easier precise. Certainty the international
2 perception of Maine is the place to do business gets another
3 black eye. Landowners get one too. And guess what, the
4 liquidation business model pretty much comes out unscathed or
5 slightly better off: Less competition and lower prices.

6 They just have to cut it a little harder to pay for a
7 longer holding period. No doubt, if you've heard plenty of
8 this subject I sure you'll hear plenty testimony from foresters
9 that these rules have no basis in silviculture and are
10 difficult to work with, at least I hope you will.

11 Unfortunately, these hearings coincide with the
12 annual New England Society of American Foresters meeting, and
13 many of them are out of state. I won't rehash what has been
14 covered well by others, but here are three things that you may
15 not have fully considered.

16 One, when the market gets destabilized by complicated
17 and ambiguous rules, the buyer profiles we would most like to
18 encourage are the ones most likely to be deterred. Some will
19 be deterred by the rules, themselves, but I am more concerned
20 that we telegraph to the international investment community
21 that Maine forests are in trouble and the State is laying on
22 another layer of rules. Investment capital could flee to
23 Mississippi just as easily Maine.

24 Destabilizing the market would send good responsible
25 investment capital elsewhere. Why not send a positive message?

1 Wouldn't it be terrific to send this signal?

2 We've considered additional rulings and decided not
3 only that our forests are in great shape, but our Forest
4 Practices Act and Tree Growth Program are working well. Why
5 not say it, it's true.

6 Instead of pointing to new rules, let's point at the
7 way this annual forest inventory, prepared directly by the U.
8 S. Forest Service and the Maine Forest Service. This report is
9 full of terrific news. It shows a wall of wood coming on line
10 as the bud worm era clearcuts his merchantable size over the
11 next few years.

12 According to the executive summary, Page II, quote,
13 Maine forests had a significant increase, 9 percent from the
14 1995 inventory estimate, closed quote.

15 Better still, quote, the estimated statewide board
16 foot volume of soft-timber trees of all species posted a
17 significant increase since 1995, closed quote.

18 Not only has volume increased by a full cord per
19 acre, but the quality is up, too. There are some concerns, of
20 course.

21 On Page 24 we learned that 25 percent of the white
22 pine total removals are attributable to land use conversion.
23 And on page 25, we learned that in southern Maine, white pine
24 removals do just to these conversions representing nearly 60
25 percent of total removal for this species in the region.

1 This goes to the heart of my comments today. The
2 Maine forest is in great shape and improving. 97.8 percent of
3 the harvest on forest and land are done right. The biggest
4 threat is from terminal harvesting due to land use conversion.

5 Second, here's another item you may not have
6 considered. Contracts for transactions will soon require an
7 affidavit from the State that the parcel has not been
8 liquidated. This will become part a boilerplate purchasing
9 sale contract much like environmental assessments and other
10 reps.

11 I suspect the Maine Forest Service will be receiving
12 quite a few requests for this, and, in fact, if the rules are
13 passed, we at LandVest will be recommending our clients get
14 such an affidavit after every harvest operation as a matter of
15 course because we expect that asking Maine Forest Service to
16 provide an affidavit will likely take more time than a typical
17 purchase and sale contract due diligence, period, would stand.

18 Furthermore, at the level of forensic forestry
19 required to make the determination, is best accomplished as
20 close as possible in time to the cut. Do we really want to
21 distract the Maine Forest Service with this?

22 Third, and perhaps the most troubling to me, is that
23 adopting these rules tip the balance in favor of the
24 liquidation business model. These are smart opportunists who
25 are quick to adapt.

1 These rules have ambiguity and loopholes, and most
2 likely enforcement will be limited. Rather than whittle down
3 the acreage of land being cut irresponsibly, I predict you will
4 see more.

5 Here is one likely outcome that will not surprise me
6 if these rules are passed. The resource wind up getting cut
7 real hard where the cut compensate for a longer holding period
8 of the land.

9 This is unfortunate because the trend I've started to
10 see with the liquidation business model is much like what Fred
11 just said. They're starting to leave with a more growing stock
12 behind.

13 Two reasons. First, there's been quite a bit of the
14 peer pressure building for these guys to clean up their act.
15 But more likely the liquidation business model is discovering
16 that leaving more growing stock makes the properties easier to
17 resell.

18 If they can get an extra \$100 to the acre by leaving
19 \$50 to the acre of growing stock, they're going to do it. So
20 what are the constructive alternatives? I said they'd sell
21 through the process, as you remember.

22 Vigorous enforcement to the existing Forest Practices
23 Act and water quality violations. I wish you all could have
24 attended the field trip the Maine Forest Service laid out for
25 the two stakeholders groups. Three of the five site visits had

1 clear violations of existing regs. Only one had resulted in
2 enforcement action and it had been settled for, in context, a
3 slap on the wrist.

4 Finally, I'd encourage you to continue to work with
5 the complementary solutions report. The beauty of that is that
6 many of those send a positive message and require little, if
7 any, growth in State government or public expense. Thank you.

8 MR. GIFFEN: Yes, sir.

9 MR. JORDAN: My name is Carl Jordan. I live in
10 Boothbay, Maine. I've been employed by the paper industry for
11 the last 27 years, and I worked for SAPPI Fine Paper Company.
12 Predecessors were S. D. Warren, and Scott Paper Company.

13 I was born and lived in and was educated in the state
14 of Maine, and my comments are going to be fairly brief, but
15 they speak to many of the concerns that have been expressed
16 tonight.

17 The forest products industry, and the paper industry
18 in particular, have suffered significantly over the past year.
19 High fuel and energy costs, shortages of logging capacity and
20 low inventories at mills have conspired to significantly
21 increase operating costs at a time when markets are being
22 bombarded by foreign imports and low sales pricing. This is
23 not a profitable time to be in the paper industry. Mills are
24 closing.

25 Any influence at this time that raises cost and the

1 supply chain or reduces the availability of fiber are a
2 terrible burden on an already struggling industry.

3 Increasing regulations and reducing the value of
4 forestland is the direct result of the rules proposed in the
5 so-called liquidation harvesting bill.

6 At a time when increasing numbers of forest acres and
7 mills in voluntary programs of independent certification, or
8 the sustainability, and when industry has actively increased
9 tension in training and education, regulation that restricts
10 fiber production in any form is hard to accept. Indeed, the
11 government certification initiative is a prime example of this
12 voluntary effort.

13 Independent loggers that often purchase the land that
14 they harvest need all of the financial tools available to them
15 to stay in business. The forest industry needs independent
16 loggers to stay in business.

17 These rules are overly restrictive, and according to
18 all published data, and the comments heard here tonight, are
19 not needed and put an additional financial strain on our
20 struggling industry.

21 Please consider shelving these rules in favor of
22 continued efforts in the areas of the complementary incentive
23 solutions sustainable forestry training. And education.

24 I would also like to comment that I do recognize the
25 incredible amount of effort and work that the Maine Forest

1 Service and the stakeholders went through to attempt to come to
2 a satisfactory solution as dictated by the legislation.

3 Unfortunately, in my opinion, the efforts, however
4 noble, were doomed from the start because the task was an
5 impossible one, and I'm not at all surprised that it was unable
6 to gain consensus.

7 MR. GIFFEN: Thank you.

8 How many additional folks are going to want to speak?
9 Okay, we will take a five-minute break.

10 (Whereupon, there was a break in the hearing.)

11 MR. GIFFEN: -- on some research -- partial answers
12 to it. Scott had asked about the size and parcel as I recall
13 were included. Don, why don't you tell us.

14 MR. MANSIUS: As far as I can tell from preliminary
15 reading of the study, the average parcel size involved in the
16 study was 114 acres. The parcel size range was somewhere down
17 around 40 up to several hundred, but I don't have precise
18 figures on that.

19 MR. GIFFEN: Okay, who would like to testify next?
20 Andy.

21 PARTICIPANT: How many acres a year did you say were
22 involved?

23 MR. GIFFEN: It's 12- to 14,000, as I recall. Keep
24 in mind here how many acres a year are involved. We've done
25 studies.

1 There have been three different efforts to locate the
2 acreage that was involved. One of them was done after the
3 five-year period had elapsed and was based upon some work
4 looking at what kind of timber harvesting was taking place
5 under the FPA, and that came to the conclusion that it was
6 somewhere between 9 and 10 percent of the acres were bought,
7 cut and, sold, and the sites did not show attention to the
8 principles of long-term forestry, okay, so that would put you
9 between 5- and 600,000 acres harvested a year would put you up
10 around 50,000 acres.

11 The other two studies were done before the five-year
12 period had expired and that includes the most recent one, all
13 right, and those were down in the range of 2 percent.

14 Now, whether or not that reflects the length of time
15 that was involved, whether or not it reflects activity waxing
16 and waning over time, who knows. But the numbers that we have
17 come up with in the various studies range from about 12,000 up
18 to around 50,000 acres.

19 Does that answer your question?

20 Okay. Who would like to --

21 PARTICIPANT: Does that include lands that's being
22 converted to other uses, or is that an isolated case that
23 started in the forestland and ended in the forestland?

24 MR. GIFFEN: My understanding is that that excludes
25 stuff that been converted. And here's our thinking on that

1 issue, all right. We're not a department of land use
2 regulation. We're a bureau of forestry.

3 Our responsibilities is for forestry. We are not in
4 charge of reforming the land use laws in the State of Maine.

5 We feel that if somebody goes through the process of
6 going to town, or going to the latest regulation commission and
7 getting a permit for a land conversion creating a subdivision,
8 an industrial site, whatever it is, if they've gone through
9 that process that's been set up by either the town legislative
10 body or the Maine Legislature to get all of their permits, then
11 it's not our job or our position to be second guessing that
12 system.

13 When they undertook that review, according to the
14 draft rules, you had to get permit in advance, okay, in order
15 to be exempt from this set of rules, and the thinking there is
16 that somebody went through the process before they harvested
17 the timber, the reviewing agency had all the options before
18 them as to what to do as regards to that piece of land.

19 We're respecting that decision making process, okay.
20 So that's the thinking on that front. That's not to say that
21 sprawl and land conversion are not important issues and State
22 of Maine shouldn't be working on them, but they have been
23 working on them for years. But it's simply to isolate our
24 responsibility.

25 We were directed to deal with the issue of

1 liquidation harvesting. That's what we're dealing with. I
2 think even the land conversion was in the legislation, if I
3 remember correctly. We were directed to have one of the
4 exemptions be for land conversions, if I recall correctly.
5 Okay, who would like to speak next. Everett.

6 MR. TOWLE: I'm a licensed professional forester, a
7 landowner licensed in Buxton and Hollis, past business owner.

8 I speak in support of the rule process, I know it's
9 not complete yet, but as it stands, I'm supporting it. I would
10 expect in the final analysis, I would hope that the SWOAM would
11 support it also.

12 I believe that liquidation harvest is a problem for
13 sustainable forestry especially aesthetics, wildlife, water
14 quality, values. The purported rule is fair for the
15 landowners. We particularly like the option, or I like the
16 options for a forester to prepare a plan, or for land to be
17 certified which would qualify it for exemptions.

18 I do have a concern about the proposed use of basal
19 area in the standard. Most of you here are foresters. I
20 believe that the basal idea that was designed for foresters to
21 use to measure density of the stands and inventory timber. I
22 don't think it was intended as a way of restricting timber
23 harvest or rulemaking.

24 I would prefer to see that be in the foresters use
25 that prepared plans for liquidation harvest. You can use basal

1 area in that process to make it a better plan. I would hate to
2 see it as a part of the rule.

3 I also suggest -- I do support the forester and the
4 master logger in order to have them be able to give approval
5 for a plan, for plans to be certified.

6 I heard comment from you in the beginning about wood
7 foresters have to be certified by FSC to do that?

8 MR. GIFFEN: No. Somebody asked the question what
9 was a certified resource manager, and I was just responding to
10 the question,

11 MR. TOWLE: I do feel that this is a tenuous process
12 to go through as a lot of the foresters have testified today,
13 and no doubt about it, there's warts on it, and I don't believe
14 you can make it perfect. But I think it's a good start.

15 I suggest that the rule be reevaluated in five years,
16 maybe by a blind independent group to see if it's been
17 effective. That's probably the best statement I can say
18 tonight.

19 And I think it's important to do that, and that would
20 be a real test to see if that's going to work or not. So thank
21 you very much.

22 MR. GIFFEN: Thank you. Who else would like to
23 testify?

24 MS. GRIFFIN: Linda Griffin. I am the president of
25 Maine Forest Products Council, but I'm not testifying tonight

1 on behalf of the council; I'll let our executive director do
2 that.

3 My husband and I are loggers in the Jackman area.
4 The business model that we're talking about here tonight is not
5 something that we have practiced. Nevertheless, I am concerned
6 about these rules, but I'm going to limit my testimony to just
7 one aspect and that is the Section 4 definitions of responsible
8 parties.

9 That definition holds loggers jointly and separately
10 responsible for a violation. I think that this is a real
11 potential nightmare for loggers. Can you imagine yourself as a
12 logger cutting a parcel according to the direction of the
13 forester and the landowner, and perhaps that you just get paid
14 for your services or you may have bought the stumpage and made
15 a small profit, and it was a perfectly legal cut at the time it
16 was done.

17 Then, a few years later, you discover that the
18 landowner may have sold the land unbeknownst to you, and
19 perhaps the harvest plan was disallowed, or maybe a landowner
20 was certified and the certification was revoked, or some other
21 scenario could happen with some of these exemptions, and
22 suddenly a violation is found, and you are jointly and
23 separately liable.

24 You know what happens in joint and several liability?
25 Everybody sues everybody before it's all done.

1 Now, some loggers will say that this couldn't happen
2 to them because they're good loggers. This is meant for the
3 bad guys out there. But you know how many people, good people,
4 have been caught in the joint and several clause of such bills
5 as say, the Super Fund Law and you know people who really ended
6 up getting big bills when they had done nothing illegal and it
7 was done in the past.

8 And the other concern I have is really with our
9 liability insurance. Now, I have been told by some people and
10 loggers that it won't affect our liability insurance, but I
11 don't believe that.

12 You know what has happened to all of our insurance
13 bills because there have been increased risks out there, and
14 because it sometimes seems this world is litigation mad.

15 So no one can convince me that loggers and foresters
16 and land managers, and from what was said tonight, probably
17 auditors, too, will not pay dearly for these rules each and
18 every time we get our insurance bill.

19 I really feel there must be a bunch of lawyers
20 smiling about this somewhere. So I'm really just asking the
21 Forest Service to consider an exemption for loggers who do not
22 have an ownership interest in the land, and to really stop and
23 think about the whole impact of the rules as written and what
24 kind of legal monstrosity is being created and what that may
25 mean to all of us in the future.

1 I thank you.

2 MR. GIFFEN: It may come as a surprise to you that
3 the Maine Forest Service is involved with some Super Fund sites
4 and we contribute our money to cleaning up sites because we're
5 held jointly and severally liable, as well. So we're aware of
6 that situation.

7 In response to the points that you make, Linda, just
8 to make sure that we are clear on this, our intention is, and
9 it's not to say that things can't get messy, okay, They
10 obviously can. Situations could be very confused, but our
11 intention in writing that language was to say that everybody
12 could potentially be responsible, okay.

13 And what we would do, if there was a violation that
14 occurred, is we would try and figure out what party or parties
15 were indeed responsible.

16 You can have a situation where the logger is held
17 harmless as you suggest because they didn't do anything wrong,
18 they followed the plan, they followed the landowner's
19 directives.

20 And you could have a situation where that was not the
21 case, where there was a perfect plan, where the landowner gave
22 the appropriate instructions and the logger was responsible.

23 So the idea here is that if that statement really
24 just recognizes that any one of the three parties that might be
25 involved, might be wholly responsible or partially responsible

1 for the situation.

2 But, as I say, I recognize that things can get
3 frightfully confused when you get into some circumstances and
4 there are competing agendas for avoiding responsibility and
5 people are casting accusations at one another.

6 This gentleman wanted to say something.

7 MR. BICKFORD: I'm Chris Bickford. I grew up in
8 Portland and South Portland. I'm 28 years old. I graduated
9 from UNH in 1998 with a bachelor of science in forestry and a
10 minor in water resource management.

11 I'm currently a licensed intern forester, and I'm
12 going to sit for the exam in October. I guess my perspective
13 is like the next generation. I don't see many people here my
14 age, and I don't believe that this legislation is any good for
15 the reasons that it's setting rules and regulations to increase
16 quality standards for the forest and to provide a better
17 forest, but these rules and regulations are going to increase
18 the cost production.

19 The rules and regulations will increase the cost
20 production in any market. Increased cost will lead to more
21 pressure in an already flailing market driving loggers to cut
22 irresponsibly and, therefore, decrease the value of land and
23 timber.

24 I think that large industry with the process is tear
25 through the tracts of forest, leaving poor sites. Site

1 conditions would benefit while smaller lot owners, private
2 industry will not.

3 I'm a wild land fire fighter. I'm a third generation
4 forester. I want to protect the forest and I want to protect
5 the families that are trying to hold on to their smaller tracts
6 of forested land.

7 In order to stay competitive and keep these smaller
8 tracts of forests, we must not enforce more rules and
9 regulations that will increase the cost of forestry. This will
10 lead to greater deforestation as private landowners are forced
11 to sell their land at real estate prices.

12 The forest will be gone and every person from
13 Massachusetts will own a subdivision where the forest used to
14 be. Thank you.

15 MR. GIFFEN: Tony.

16 MR. LYONS: Good evening. My name is Tony Lyons, and
17 I'm director of fiber supply for the pulp and paper mill in
18 Rumford, Maine.

19 We consume some 1.8 million tons of pulpwood, wood
20 chips, and buy en masse annually in the production of coated
21 paper and market hardwood pulp.

22 We rely on private landowners and loggers for all of
23 the fiber we consume and are concerned that the Maine Forest
24 Service has gone too far in attempting to solve a problem which
25 by their own analysis appears to be relatively small.

1 The Rumford mill has long supported and been
2 committed to sustainable forestry. After policies insure wood
3 be purchased is produced following best management practices
4 and, in fact, we conducted over 700 harvest site visits in
5 2003, and quoting from our August 2003 FSC third-party audit by
6 BBQI, the monitoring of procurement sites is of the highest
7 standards seen within the FSI system.

8 The frequency of inspections insures that procurement
9 timber is really coming from sustainably managed woodlots.

10 We offer a delivery preference for pulpwood sourced
11 from small certified forestland ownerships. We have hundreds
12 of millions of dollars invested in our facility in Rumford and
13 are committed to there being a healthy forest products industry
14 to encourage the long-term management of forestland in Maine.

15 I emphasize that we encourage the management of
16 forestland as long-term ownership of Maine's forestlands has
17 never been an historic reality. History shows that there have
18 been many owners of Maine's timberlands.

19 These lands have been sold, bought, and sold again.
20 Some of Maine's most famous forestland parcels -- Baxter State
21 Park and Acadia National Park -- are in reality now single
22 blocks reassembled from multiple parcels, some of which were
23 most likely liquidated, if not for the trees, certainly for the
24 value of the land.

25 Changes were made two years ago to the Tree Growth

1 Tax law to close a liquidation harvesting loophole. The rules
2 don't even acknowledge the commitment the landowner makes when
3 they enroll their land in the Tree Growth Tax program.

4 That commitment includes the intent to operate on a
5 sustained yield basis and to promote better forest management.
6 A forest management and harvest plan certified by a licensed
7 professional forester is required before any harvesting is
8 conducted, and every ten years a licensed professional forester
9 must submit a statement that the landowner is managing
10 according to the forest management and harvesting plan.

11 The Tree Growth Tax law has kept millions of acres of
12 Maine land forested and managed for the long term. Its success
13 is not even considered worthy enough to be considered for an
14 exemption.

15 The rules will apply wider than you expect and dampen
16 the enthusiasm for the purchase of forestland to produce forest
17 products. The scope is too broad. It immediately affects all
18 land purchased for the first five years of ownership.

19 Land will still be liquidated. The 40 percent volume
20 maximum means the majority of the value will be removed. The
21 remaining stand will be mostly pulp wood, and more acres will
22 be harvested to replace that left-behind pulp wood. 40 percent
23 is too low. Enforcement is costly and time consuming.

24 We will require an inventory of the post-harvest
25 stand and a complete stump tally of harvested trees to recreate

1 the pre-harvest stand. I doubt if the Maine Forest Service has
2 a staff that can be devoted to measuring stumps. It's too
3 much, too fast, with too broad an impact. Thank you.

4 MR. GIFFEN: Thank you, Tony. Pat.

5 MR. STROUT: My name a Patrick Strout. I live in
6 Exeter, Maine, and I'm here representing the Maine Forest
7 Products Council as their executive director.

8 The Maine Forest Products Council is a diversified
9 organization. A lot of you folks already know about us. We've
10 got loggers, contractors, truckers, landowners consulting
11 foresters, pulp mills, saw mills, secondary wood manufacturing,
12 and we all have about 450 members representing this broad
13 spectrum.

14 My membership represents close to half of the
15 forestland in Maine, and the majority of the wood harvested in
16 some way or another, either by consuming mills or produced on
17 land.

18 Over 75 logging companies help shape the opinion of
19 the Maine Forest Products Council board positions, and during
20 the hearing of LD 1616, which was the body of this rulemaking
21 legislation, the council expressed numerous concerns that could
22 be summarized as follows.

23 We were concerned that the rulemaking would open up
24 the Forest Practices Act putting 17 million acres on notice
25 that their regulatory world may soon be adjusted, an creating a

1 wave of instability.

2 We were concerned that the rulemaking would begin
3 before the data analysis was completed, something that has been
4 a problem. We thought that the real issue behind liquidation
5 harvesting is development.

6 We stated that we want to support the efforts that
7 will encourage long-term land ownership and management and we
8 want to do so, so that it will not create instability in
9 ownership or devalued land.

10 We're certainly appreciative of the Maine Forest
11 Service's effort to conduct that stakeholder process to seek a
12 collaborative rule.

13 Council delegates to the process have been diligent
14 in bringing back information from that stakeholder process for
15 the board for consideration. However, when the stakeholder
16 process failed, some critical issues were left without
17 resolution, and as a result of all these circumstances Maine
18 Forest Products Council board supports efforts at finding
19 appropriate remedies to liquidation harvesting, but it does not
20 support the rules as written. And the basis for this position
21 -- I can just go on to explain briefly.

22 The rulemaking must be based on sound information.
23 In a 2003 Maine Forest Products Council commission report, we
24 looked at some of those issues and verified that we needed to
25 know how much timber liquidation was going on, where it was

1 occurring, and what impact outreach efforts and forest
2 certification, and regulatory change that had already taken
3 place have had on liquidation harvesting. We thought those
4 were important questions then, and we think that's the same way
5 now.

6 In the 1999 Maine Forest Service study, they
7 concluded up to 10 percent of all harvests in Maine may be
8 considered liquidation harvests.

9 The preliminary results of the 2004 Maine Forest
10 Service study -- and they're not yet completed and I understand
11 that, but it's the best information we have right now -- is
12 what was presented to the Agriculture, Conservation and
13 Forestry committee to get us this far into the hearing, and in
14 that forum we indicated that the number of acres undergoing
15 liquidation harvesting is 2.2 percent on an annual basis.

16 That's about 14,000 acres out of the 565 acres
17 harvested annually. The council believed that in light of this
18 information, the current rule casts too large a net over
19 harvesting operations and fall short of the original goal
20 stated by the Commissioner of conversation to develop a rule
21 that is very tightly focused on the behavior we want to change.
22 That was the intent.

23 Much was learned during the stakeholder process, but
24 lack of field study information before halting the
25 collaborative effort would have helped us along the way.

1 It's reasonable that when you look at the difference
2 between the two studies and the improvements that have been
3 made, there's reasons for that. Over 6 million acres of land
4 have been third-party certified and mills have made substantial
5 effort to train loggers, foresters, and landowners in
6 environmental protections at the time of forest harvest.

7 The Maine Forest Service initiated it's wood-wise
8 programs providing information to non industrial landowners.
9 There were changes in law.

10 We've had as well in zoning for both the organized
11 and unorganized towns. It acted to curb liquidation harvesting
12 and LD 1920 made substantive changes to the Tree Growth Tax law
13 to address liquidation harvesting. So it's not like it's been
14 a stagnant situation without a lot of hard work going on since
15 the problem has been identified.

16 Liquidation harvesting is complex and challenging and
17 these steps have all had an impact on the challenge. If the
18 incidence of harvesting is decreased to 2.2 percent level, the
19 rule promulgated needs to match the problem.

20 I just wanted to spend a little bit of time talking
21 about the effect of the exemptions listed in the rule, and that
22 chart has driven me crazy. It's a good visual dynamic, but
23 what I want to do is take those exemptions and get out a ruler
24 and put a scale on that chart and show how that funnel really
25 works.

1 When I do that, I can only find about half of all
2 that harvested land that Maine falls into of category of
3 exemptions. That's my interpretation, but I would simply
4 illustrate the point that we need to do some more calculations
5 to really understand the effect of these rules.

6 My point is, I think about halfway up that triangle
7 is when the rules start to take effect, and I think that bears
8 some investigating in determining if that, in fact, is the
9 case.

10 I don't think the graphic is designed to
11 intentionally mislead, but truly, a more thorough analysis
12 needs to be conducted.

13 This is ringing true from all of the other testimony
14 and all the other locations as well. We're finding folks that
15 are involved in owning land and operating land. The stakes are
16 high for them, and they're very concerned because they do
17 perceive the rule to be a wide net cast over them as well.

18 That's what drives the mills to great concern, as
19 well. The effect of tapering on the land base and on the
20 harvest area and on the acquisition of land is a tremendously
21 destabilizing force.

22 There remains some serious technical issues with the
23 rule as written. I don't want to go into those. We will
24 submit a complete listing of those technicalities. We've had
25 lawyers and specialists taking a look at them.

1 For instance, there is a definition of sale or offer
2 for sale that does not take into account internal corporate
3 transfers. We need to rectify that. Another example might be
4 the definition of a parcel penalizes future land conservation.

5 If you buy a parcel and it's contiguous with another
6 piece of land, that may tag you, and we talked about how we
7 will modify that provision. But it needs to be done.

8 Again, we heard previously that third-party exemption
9 is not effective as written. It really isn't an exemption, and
10 we need to look more closely at that language.

11 Other technical issues I'll submit so you can see the
12 concerns that we have.

13 When we look at the options, the rules limit tree
14 removal up to 40 percent of the stand volume before a harvest
15 plan is required.

16 We think this provision is too restrictive and
17 without a solid forest science basis, it overreaches the intent
18 of legislative mandate to limit the removal of most or all of
19 the commercial value of standing timber.

20 Effectively, 60 percent of the land is left after a
21 harvest is restricted by this provision. It's not clear what
22 the desired outcome of this option was. Curbing the level of a
23 heavy harvest with this option will only be accomplished if
24 realistic thresholds are established.

25 By creating an artificially high threshold for

1 Option 1, the council's concern is that too broad a net of
2 enforcement is again being cast over the harvester and the
3 landowner.

4 Another major concern with inappropriate threshold
5 levels is that harvesters using this option will tend toward
6 hydrating as we've all heard about in previous testimony.
7 They'll remove higher value trees instead of culturing a crop
8 of future saw log trees.

9 The 40 percent limit has been described as being
10 consistent with LURC's shorelands zoning regulations to protect
11 riparian zones, but the intended environmental protection has
12 no basis in restricting harvesting practices.

13 There's just no common connection between the LURC 40
14 percent rule and the use of the 40 percent rule and this rule.

15 The proposed harvest plan is too subjective and too
16 complex. This is the Option 2 item in the rule. It had merits
17 in terms of modifying behavior by emphasizing harvest plans all
18 important to us. However, trained professionals will struggle
19 with the requirement plans as written, and we really recommend
20 that Maine Forest Service field test the provision in the
21 harvest plan with the intended audience. I think that is an
22 important exercise to see if indeed the plan works, for those
23 that intend to use it.

24 Both the Maine Forest Service and the forest industry
25 have considerable experience in adult education methods as a

1 part of outreach programs. The SFI program is an example, and
2 that's why we're a little bit concerned about it being
3 difficult to implement this option written the way it is. The
4 concepts of biodiversity with S1 and S2 species, consultations
5 with the Maine Natural Areas Program are all important, but
6 they are developing concepts and they should be promoted
7 outside the regulatory process.

8 We see these rules and concepts coming into the
9 Forest Practices Act via liquidation harvesting rules, and
10 again, we think we're violating the narrow focus and intent of
11 the rules.

12 What are the desired outcome from this regulation?
13 The Maine Forest Products Council believes there should be
14 better planned harvests that focus on environmental protection
15 and the rational silvicultural prescriptions and that the
16 current rules will only serve to -- they will not accomplish
17 that.

18 Expand and intensify education in outreach efforts
19 among landowners, loggers, and foresters. This is a concept
20 that we've been dealing with as a council.

21 The forest industry and the Maine Forest Service have
22 been successful in developing voluntary outreach programs that
23 effectively change behaviors and result in environmentally
24 sound harvesting practices.

25 If you look at the inception of the CLP program, it's

1 been effective in setting expectations for harvesting
2 operations concerning best management practices for water
3 quality, managing aesthetic, and educating loggers and
4 landowners alike on the regulations and rules they need to
5 follow.

6 This has been a collaboration of private industry,
7 the Maine Forest Service, the Department of Environmental
8 Protection; and in the DEP is part of its consent decree, we'll
9 send folks that need a little bit of education into some of
10 these workshops.

11 The LURC and Maine Forest Service have done the same.
12 I think we will have to admit that this kind of outreach has
13 been effective. We're seeing improvements in the operations of
14 lands, and this is the kind of effort that's an example that
15 would be more successful. Targeting heavy harvesters with
16 material developed by industry and government agencies is a
17 concept that will be more effective.

18 Investing in these efforts rather than administering
19 a complicated rule will promote continuous improvement in the
20 stewardship of Maine Forest.

21 In our final analysis of the rules, serious technical
22 revisions to the rules are required before it needs to be
23 enacted, if it's to be enacted.

24 As described in the Commissioner's letter to the
25 Legislature, it would be important to complete the cost and

1 benefit analysis of these proposed rules from multiple
2 perspectives.

3 We need to test the assumptions about how many
4 exemptions are granted and what the cost of these rules are
5 going to be. We've certainly heard a lot of testimony that
6 talks to the complications these rules will have on small
7 businesses and we need to understand those better.

8 The desired outcomes of the proposed options need to
9 be determined, and the revisions to the rules are just going to
10 have to be required to be effective.

11 Opportunities for collaborative education outreach
12 should be preferred to rules that will be burdensome to
13 practitioners and regulators alike.

14 So while the Maine Forest Products Council board
15 remains committed to working with the Maine Forest Service to
16 reduce liquidation harvesting, we believe any proposed
17 solutions must work to improve forestry practices on the
18 ground, not impose penalties and restrictions.

19 If there's one thing that can be learned, this is the
20 third hearing that I've been to, practitioners and landowners
21 from large to small have been concerned about these rules and
22 have been active in the hearings.

23 They've got something to lose, and it's not about
24 trees, it's about people, and we're tinkering with the
25 livelihood of the industry and the people in that industry, and

1 these rules are something that we need to take very seriously
2 to go forward with.

3 MR. GIFFEN: How many additional folks would like to
4 testify at this point? Charlene.

5 MS. KRUG: My name is Charlene Krug, executive
6 director of Maine Landowners Alliance. We are a new group
7 established within the last year. Our primary goal is to
8 preserve, protect, and restore our private property rights that
9 are being diminished constantly throughout the state.

10 These rules, it is our contention, are terrible
11 usurping on those private property rights. They only serve to
12 build a foundation to further reduce the number of jobs in
13 industries in Maine, while imposing additional restrictions on
14 the rights of the landowner.

15 I've had the pleasure to be part of the traveling
16 road crew. We were following the public hearing process for
17 the last three nights, and I want to say that we've been mainly
18 concentrated in the southern part of the state. Last night in
19 Ellsworth, Mr. Given was challenged on that particular point,
20 and I believe that the answer was that we are in an area of the
21 state where most of the liquidation, it was felt, had occurred,
22 pretty much.

23 I'm quite certain that John Martin would disagree
24 with you, up in Eagle Lake, and I'm also quite certain those
25 who spend 18 hours a day working in the woods in northern Maine

1 trying to earn a living in an industry, one of the few left up
2 there, would quite agree, as well.

3 In a state that's over 90 percent forested, whose
4 very heritage is in the woods and whose 3.2 million acres of
5 forestland in the north woods add \$986 million a year to the
6 Maine economy, I find it kind of disturbing that the Maine
7 Forest Service would not go to the northern two-thirds part of
8 the state for hearings on such an important issue. That being
9 said, it's been very interesting the last two nights.

10 As of right now, I've been keeping a running tally.
11 We're running at 38 people testifying against the rules. We
12 have had nine people testify in support, and four neither here
13 nor there.

14 I'm not going to reiterate what we've heard about the
15 poor and dismal business climate that we've had in the state of
16 Maine. But I would point out that these 38 people who have
17 testified against the rules, they take risks every day. They
18 employ people. They have people on their salary on their
19 payroll.

20 Some of these employers are the major employer in
21 town, and in a rural economy when you're supporting your
22 employees, your employees' families, the grocery stores they
23 visit, the gas stations, if they have it, even the post office,
24 we should be applauding these people.

25 We should be thanking them for sticking with it in a

1 poor climate that's over regulated. Calling for stiffer
2 penalties will lead to the ruination of this economy.

3 We've heard these nine people testify in support of
4 the rule. They're calling mainly for stiffer fines and
5 penalties, more regulations, stringent restrictions, asking the
6 Forest Service not to forget about plants, so you can't cut
7 down trees that have plants growing next to it.

8 They're looking to abolish the act of buying and
9 selling land and harvesting of timber. We've lost farmers,
10 fishermen, lobstermen. We're driving out blueberry operations,
11 builders, manufacturers. Let's not forget about the loggers.

12 The Maine Forest Service has been handed an enviable
13 task, and they've tried their best, and they're doing a great
14 job of trying to keep everybody all in one line.

15 They've been mandated to implement rules that were
16 promised during our campaign pledge. Now, take that the way
17 you take that, but they only need to look at the last three
18 major reports clearly stating that Maine's forests are in great
19 shape.

20 You've heard earlier tonight just how great a shape
21 they are in, so I will not reiterate; but studies conducted
22 during the rulemaking process show only 14 sites could be
23 considered timber liquidation. Even then it's not entirely
24 clear as the five-year period has not elapsed on some of those
25 sites.

1 Why can't we be positive? Barely 2 percent of the
2 sample, less than 1/100 of the total acreage of Maine could
3 meet the criteria for a possible violation. Clearly, the
4 current existing laws are working and they're working well.

5 Many before me have testified about the cost of
6 uncertainty in Maine. The rules amplify that issue.

7 By continuously assaulting a perceived problem, we
8 are further degrading our already dismal business climate.

9 When businesses have to invest constant time, energy,
10 and money fighting an issue that keeps creeping up every
11 legislative session, every political cycle, all reports
12 indicating a statically insignificant problem, businesses are
13 going to close. They're going to leave Maine, and they're
14 certainly not going to come here.

15 The very definition of liquidation harvesting is
16 subjective, including phrases like most or all, and without
17 regard. The rules are equally subjective.

18 Each local municipality will be required to be
19 trained by the Forest Service as to how to interpret these
20 rules and apply it. This will lead to varying degrees of
21 interpretation and much confusion as the landowner tries to
22 determine which definition of these ambiguous phrases apply in
23 that particular town.

24 Barring that, they're going to have to hire a
25 forester to have a third-party audit, certification, or

1 whatever you want to call it. It's going to involve an expense
2 of hiring another forester to prove yourself innocent.

3 It's a guilty until proven innocent climate. It's
4 not one that we want to foster. In Farmington it is referred
5 to as the Forester Full Employment Act.

6 The Maine Forest Service has not fully investigated
7 incentives due to a multitude of projects on their plate and
8 the budgetary constraints. They freely admitted they're
9 overworked and overburdened.

10 What guarantee do we have that the Forest Service
11 will have the budget to fully train every municipality on these
12 issues and not unnecessarily burden the landowner?

13 The Forest Service was directed not to consider or
14 reopen the Forest Practices Act. However, these rules are
15 going to add a second set of rules in addition to the Forest
16 Practices Act. It almost assumes that the Forest Practices Act
17 is not working, but they only have to look at their own data
18 and their reports to see that the Forest Practices Act is
19 working.

20 When they conducted their site visits during the
21 rulemaking process, not one single site was found to be in
22 violation of the Forest Practices Act. Now, I hate to say it,
23 but if you're contending that bad forest practices are what is
24 the goal and the aim of these rules, then you need to be
25 looking at the Forest Practices Act, if it's not doing what you

1 want it to do instead of adding an entirely new set of rules
2 and regulations on top of it.

3 I contend that these misconceptions can be easily
4 solved through education. I agree with the gentleman in
5 Farmington who stated that this was a social issue.

6 We have all heard of the saying, do not judge a book
7 by its cover. This is what's happening in Maine.

8 Sometimes the harvest looks bad. That does not mean
9 it was not silviculturally justified. It does not mean that it
10 was done without a harvest plan. It also does not mean that it
11 is necessarily that picture that you're looking at on the
12 website. It doesn't necessarily mean that one was taken in
13 Maine. It could mean that it was taken in Russia and put onto
14 a website.

15 I would argue that not only do landowners need more
16 training and education, the people of Maine need to be educated
17 and trained as to what silviculture even means, and to what a
18 forest harvest site could potentially look like and still be
19 justified, and still be good for the forest.

20 At the Farmington meeting I heard that the tax cut
21 reform had been revised again. I don't know if that's true,
22 but it seems to me that no matter what these loggers do,
23 they're constantly being attacked, constantly being
24 overburdened with paperwork, and subjected to more and more
25 rules and regulations.

1 These proposed rules amplify that issue. The
2 proposed harvest plan is burdensome. It requires an inordinate
3 amount of detail and is unnecessarily burdensome.

4 The 40 percent rule that triggers the harvest plan
5 does not approach most or all as per the definition, and it is
6 unreasonably restrictive. These rules do not accomplish the
7 goal of LD 1616. That goal has already been accomplished.

8 Don't be discouraged. These rules will claim
9 success. They will be successful in creating supply problems
10 for builders. They will be successful in putting more families
11 on welfare. They will be successful in driving more businesses
12 and young people from our state.

13 I urge the Forest Service to be reminded that once a
14 woodlot is harvested, it's not about making a quick buck that
15 entices a landowner to sell, it's about asset management,
16 business viability, and common sense.

17 Further restrictions on what can be done with that
18 land added to an already long laundry list of regulations will
19 only serve to further constrict commerce. It's not only bad
20 for the industry, it's bad for Maine.

21 Thank you.

22 MR. GIFFEN: Other folks who would like to testify
23 tonight. Andy.

24 MR. IRISH: I didn't really plan to testify. I think
25 being on the rules committee, spending eight days listening to

1 testimony tonight, I had to give them some of the facts.

2 We had a diverse group. We had Cathy Johnson. We
3 had Doug Denico and everybody in between and believe it or not,
4 some middle ground, which nobody would believe that.

5 We took everything that anybody has said tonight into
6 consideration. We was given a task, the law was made, we're
7 given a task to write a rule that was the least intrusive and
8 get the job done.

9 There wasn't one thing that was brought tonight that
10 we didn't hash over from one spectrum to the other.

11 Some of the things that you're using against them was
12 put in there to protect people, like the 40 percent. We've
13 heard a lot of hammering on that. That was not what the rule
14 wanted to see done.

15 The rule wanted to see anybody that was in the
16 business of liquidation harvesting have a forester draw a plan
17 and have some on-site supervision. That's what the plan is
18 for.

19 The 40 percent is for somebody who didn't want a
20 forester, owned a 110 acres, he could cut 40 percent and he
21 didn't have to go through that. That was a scapegoat, not to
22 be the plan.

23 The 6 acres you sold for your daughter, that's why we
24 put the 20-acre exemption in there. It isn't perfect. There
25 is a lot more consensus than what is being portrayed.

1 We hashed out most -- we hashed through eight solid
2 days of sitting in the room, and I don't like sitting in a room
3 talking about this kind of thing, and every viewpoint was
4 given, and I hope that we took the middle ground.

5 Not that there isn't room for improvement, not that
6 we did everything right, but we sure did a lot more right than
7 what I heard tonight.

8 There is a law on the books that says they're going
9 to do it. No is not an option. Doing nothing is not an
10 option. There we go.

11 So I mean -- unless, all the things I've heard have
12 been addressed, and I just don't know how you could come to as
13 close to the middle as we did with the time frame and consent
14 being in the restraint that we had.

15 I think that we're picking and choosing when we're
16 talking about the bill and talk about target. Standing up here
17 is being a target. I mean I just -- it's not something I like
18 to do. It's not politically correct for me.

19 There were a lot of times you had to be put on the
20 list, and I think if you think of it that way, what is this
21 going to do for me, and what is this going to do against me?

22 I think that we spend a lot of time trying to protect
23 as many as we possibly could. You can pick it apart, yeah, you
24 can make assumptions, you can do all kinds of things, and there
25 are things that have to be done afterwards. There is no doubt

1 about that.

2 We tried to protect as many people as we possibly
3 could and get to the root of the problem for the law that was
4 already on the books. So something's going to happen no matter
5 what. The law is there.

6 MR. GIFFEN: Anybody else who would like to speak?

7 Yes, sir.

8 MR. MESERVE: My name is Jeff Meserve. I am a
9 consulting forester in South Paris. I appreciate what Andy
10 just said regarding all the work that's been done, but it's --
11 what I'm seeing here is a gradual erosion of property rights.

12 I was in school at the University of Maine when the
13 Forest Practices Act was passed, and that was the end all.
14 Then we survived those two referendums votes, millions of
15 dollars and a lot of effort, but it gets back to the private
16 property rights that, I guess, that's the crux of the whole
17 thing. The Maine Constitution and the Federal Constitution,
18 and the National, both call for that.

19 It's a shame that we have to sit here, and there's
20 something that can be done about this law that's been passed,
21 it can be repealed. And I asked the Governor to do that. I
22 asked that very question. I said get rid of this thing, We
23 don't need it.

24 And by the testimony that I've heard, and evidently
25 the other two places that have been testified at, there's no

1 need for this law.

2 If we continue to do this, it's like not putting a
3 water bar on the skid trail. It's a gradual erosion of our
4 property rights, and eventually what do you end up with?

5 I can relay BMPs are great, but think about it from
6 the standpoint, I looked at a logging job that took place 35 to
7 40 years prior, and this was 10 years ago, so it's 50 years old
8 now. There was an erosion ditch from a lack of BMPs that was
9 30 feet deep and 50 feet wide, and that was on paper company
10 land.

11 So what we see today might only be a small, the
12 beginnings of a gully erosion. Eventually we're going to find
13 that it is going to create quite a gully, and I think we are
14 going to be burdened in the future -- is it Chris who was
15 talking about he didn't see anybody his age? Well, I'm 36
16 years old and I don't see much future in this business.

17 Thank you.

18 MR. GIFFEN: Other folks who would like to testify.
19 Yes, sir.

20 MR. SCRIBNER: I didn't come here because I wanted
21 to, I came here because I had to.

22 MR. GIFFEN: Your name, sir

23 MR. SCRIBNER: Wendell Scribner. I'm from Harrison,
24 Maine. I'm a logger and a landowner. There are a lot of
25 unanswered questions in this proposed bill and rulemaking.

1 I asked some questions earlier in this meeting. I
2 have some more. What is the Maine Natural Areas Program? Why
3 would I want to develop snag and cavity trees to have a
4 lawsuit? Who draws the map and identifies wetland and
5 endangered species, plants, animals, et cetera?

6 What are exemplary communities? Who determines them,
7 and what are the penalties for not complying with this
8 legislation?

9 What if the timber harvest plan is not implemented
10 during this harvest? What are the penalties, and who pays?
11 What if the forester didn't fill out the necessary paperwork
12 following a timber harvest? What are the fines and penalties,
13 and who pays for that?

14 We already have to keep a management plan signed by a
15 professional forester under the tree growth plan for ten years,
16 so why do we have to keep this -- why is this written into the
17 legislation concerning the five-year -- you have to keep your
18 management plan for five years and available for the Bureau of
19 Forestry to see it at any time.

20 Why is the bureau the only one to determine who
21 qualifies for hardship? Why is the landowner only allowed one
22 option in the five-year period? What are the penalties for not
23 complying with this?

24 How do you get a variance? What if a variance is not
25 granted? What are the penalties for not complying, and who

1 pays? What does 12 MRSA Chapter 809 say?

2 This law should be repealed. It gives too much
3 authority and power to the Commissioner of Conservation, the
4 Bureau of Forestry, and others.

5 Why are you trying to penalize and destroy loggers,
6 landowners, developers, and others from making a living and
7 supporting their families?

8 What is biodiversity, and who determines this? Why
9 are we getting this sustainable forest initiative crammed down
10 our throats?

11 Not all liquidation harvesting is bad. It provides
12 homes in a subdivision, jobs for carpenters, electricians,
13 plumbers, masons, loggers, landscapers, et cetera.

14 The best threat to the forest management comes from
15 legislation like this. In order to try and stop liquidation
16 harvesting, you're putting people out of business.

17 Why is the Commissioner the only one to adopt rules
18 for liquidation harvesting? What happened to our legislators,
19 and why aren't they representing us?

20 What does Title V, Chapter 375, subchapter 2(a) say?
21 What are green certified forestlands? Who determines them?
22 How are we going to expand markets? Who is going to pay for
23 it? Have you come up with any other relevant approaches to
24 this? What are they?

25 What is the forest certification advisory committee?

1 Who is on this committee? What is a certified timberland? How
2 do you become certified? What are the costs to have your land
3 become certified timberland? Who pays for your land to become
4 certified?

5 Real estate brokers will also have to be mandated to
6 take classes on this like they had to on radon and other
7 things.

8 Instead of loans to allow landowners to -- instead of
9 the loans, you need to allow landowners to prepare and sign
10 their own management plan, therefore reducing the cost of
11 hiring a forester, increasing their profits, then less wood
12 would have to be cut to manage, maintain and be good stewards
13 of the property that they have.

14 Say a landowner gets a sustainable forester revolving
15 loan, who administrates how and when he pays? What are the
16 penalties if it's not paid after the harvest? What if he died
17 and the land gets transferred? Who pays for this loan? What
18 are the interest rates? How can any money be available when
19 the State is in such a crisis?

20 What would the landowner's annual compliance report
21 consist of under property tax rebates for sustainable forestry?

22 How often would Maine Forest Service monitor to make
23 sure the landowner was complying with this management plan and
24 sustainable forestry? Would Maine Forest Service be required
25 to get a search warrant before entering or placing its foot on

1 the property?

2 A person should be able to sell their property at any
3 time. A time limit should not be a factor in the selling of
4 land whether it's liquidated or not. This legislation, I
5 believe, is a violation of the Fifth and Fourteenth Amendment
6 to the U. S. Constitution.

7 How are you going pay for your taking of our property
8 and holding it hostage for five years? This legislation is
9 ludicrous. I hope you will urge our elected officials to kill
10 this bill and any like it.

11 Thank you.

12 MR. GIFFEN: Okay, anybody else wish to speak this
13 evening? Are there any questions that anybody has?

14 PARTICIPANT: How am I supposed to practice forestry
15 with all these rules?

16 MR. GIFFEN: The law requires that you comply with
17 any rules that exist.

18 PARTICIPANT: I need a lawyer just to sort through
19 them.

20 MR. GIFFEN: I'll admit that they are complex.

21 PARTICIPANT: On LD 1616 in the purpose statement,
22 the first sentence says the Legislature finds and declares that
23 the State's forests and resources are of great significance to
24 the people of the state. That's talking about the Maine Forest
25 land, the Maine Forest Service land?

1 MR. GIFFEN: No.

2 PARTICIPANT: That's talking about private property?

3 MR. GIFFEN: It's talking about forests of the State.

4 PARTICIPANT: Well, it implies ownership, the State,
5 apostrophe, s. The State's forest. I beg to differ. I own
6 property and I guarantee you that the State does not -- that is
7 not a state forest. This law right there breaks
8 constitutionality, right in the first sentence.

9 MR. GIFFEN: Okay. You're entitled to your opinion.

10 Yes, sir. Scott.

11 MR. HANINGTON: I'm Scott Hanington from Wytovitlock.
12 I was in the one in Ellsworth last night and I would like make
13 one comment on all the testimony I've heard.

14 Folks who make their living in the forest products
15 industry should send a message to the Forest Service being you
16 don't need any more rules and regulations.

17 The Forest Practice Act is working, and I believe, if
18 I could pick Charlene's notes a little bit, those that
19 testified in support of these rules are academicians and
20 environmentalists.

21 So I just want to make that comment. That's what I
22 have seen here. I do commend the Forest Service and all those
23 folks who have worked here because this is probably going to be
24 passed unless all those in the forest product industry here
25 don't get to their legislators, talk to them, and tell them to

1 repeal it.

2 Again, I would like to thank all those who have
3 worked so hard and traveled. You have to be in Millinocket at
4 5 o'clock? I've got to be in Millinocket and then Bangor at 6.

5 MR. GIFFEN: Okay. Thank you all for coming.

6 PARTICIPANT: I wonder if there is just a possibility
7 that the Maine Forest Service can come back and recommend to
8 the Legislature that gees, is that an option?

9 MR. GIFFEN: All of the testimony will be recorded.
10 It will be available. For us to go back -- we have a mandate
11 to proceed on this issue. I was essentially asked the same
12 question; I think it was in Farmington.

13 We have a mandate to proceed from both the Governor
14 and the Legislature, and we're going to report back accurately
15 what we've heard from folks at these public hearings, and we
16 will take up with the Commissioner what he feels should be
17 done, and we will proceed.

18 Is it likely that there's not going to be a rule
19 proposed? I don't think that's very likely, given the fact
20 that there's a law on the books and that we have that mandate
21 from the Legislature.

22 PARTICIPANT: Your report has to go to the committee
23 for their acceptance?

24 MR. GIFFEN: The process here is that the
25 Commissioner will end up deciding what to do to provisionally

1 adopt these rules. The mandate is to him to provisionally
2 adopt rules.

3 Those rules then go back to the Legislature. They go
4 first to the ACF committee, and then they go to the full
5 Legislature. That's the process.

6 PARTICIPANT: So there can be some input from us?

7 MR. GIFFEN: Yeah, this will go through the
8 legislative process.

9 Charlene.

10 MS. KRUG: If the rules are provisionally adopted,
11 will they be published? How will we know what they are?

12 MR. GIFFEN: Sure, absolutely.

13 MR. MANSIUS: They will be published as a
14 provisionally adopted rule.

15 MS. KRUG: In the major papers, the whole pack?

16 MR. MANSIUS: Yes. The notice of rulemaking adoption
17 is published in the paper. The rule will be available. We
18 will publish it on the website.

19 MS. KRUG: Will they be only made available on the
20 website?

21 MR. MANSIUS: No. The date when the provisionally
22 adopted rule is done, it will go up to the website, but it has
23 absolutely no legal effect.

24 MS. KRUG: So will the folks in this room be expected
25 to adhere to those rules on the date you posted on the website?

1 MR. GIFFEN: No.

2 MR. MANSIUS: No. Absolutely not. The legislative
3 process is that we provisionally adopt the rule. The
4 Legislature must authorize final adoption of the rule. The
5 rule has no legal effect until it is finally adoption.

6 MR. GIFFEN: By the Legislature.

7 MS. KRUG: I'm just trying to make that crystal
8 clear.

9 MR. GIFFEN: Yes.

10 MR. FOSTER: My name is Jerry Foster; I'm from Gray.
11 Follow up. Based on testimony that we've heard at these
12 hearings, if that testimony suggests that this law be repealed,
13 is there any law that prevents you from recommending it?

14 MR. GIFFEN: Is there a law that recommends that
15 prevents us from recommending it? Probably not.

16 What we have is at present -- we have a mandate from
17 the Legislature to develop rules, and the Commissioner has a
18 mandate to provisionally adopt rules. That's what his legal
19 responsibility is right now.

20 If the Legislature were to repeal the law or amend
21 the law, then we would have a different mandate from the
22 Legislature; but our mandate right now -- and I'm sure you
23 wouldn't want the Maine Forrest Service to be a rouge agency
24 whose off doing its own thing -- our legal mandate through our
25 system of representative government is that we are charged with

1 the responsibility of developing draft rules, and that's what
2 we're doing.

3 MR. FOSTER: What I'm getting at is, if the testimony
4 suggests that this law shouldn't be repealed, there's nobody
5 that would recommend it or even suggest that to the
6 Legislature?

7 MR. GIFFEN: The Commissioner could provisionally
8 adopt rules, and he could say, I don't recommend that you adopt
9 these, Legislature.

10 I suppose that's possible, but he has a
11 responsibility to provisionally adopt rules. That's his legal
12 responsibility right now.

13 MR. FOSTER: But in that adopting of those rules, he
14 can also present a fee scenario and say, I ask that you repeal
15 this law.

16 MR. GIFFEN: I suppose anything's conceivable.

17 PARTICIPANT: He did his job and now he's saying.

18 MR. GIFFEN: He is under an obligation to
19 provisionally adopt rules.

20 MR. SCRIBNER: Wendell Scribner . Who is he, the
21 Commissioner?

22 MR. GIFFEN: Yeah, The Commissioner. Patrick
23 McGowan. Commissioner of the Department Conservation.

24 MR. GIFFEN: Are there any other questions that
25 anybody has tonight? If not, thank you all. I appreciate you

1 all keeping dialogue civil tonight.

2 (Whereupon, the hearing was concluded at 8:43 p.m.)

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CERTIFICATE

I, Lisa Fitzgerald, a Notary Public in and for the State of Maine, hereby certify that on March 25, 2004, a public hearing was held by the Maine Department of Conservation, Maine Forest Service in Gorham, Maine regarding MFS Rule -- Chapter 23, Timber Harvesting Standards to Substantially Eliminate Liquidation Harvesting.

This hearing was stenographically reported by me and later reduced to typewritten form with the aid of computer-aided transcription; and the foregoing is a full and true record of the testimony given by the witnesses.

I further certify that I am a disinterested person in the event or outcome of the above-named hearing.

IN WITNESS WHEREOF, I subscribe my hand and affix my seal this April 26, 2004.

LISA FITZGERALD, NOTARY PUBLIC
Court Reporter

My commission expires: May 10, 2004